

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 DANE R. GILLETTE  
Chief Assistant Attorney General  
3 JULIE L. GARLAND  
Senior Assistant Attorney General  
4 JESSICA N. BLONIEN  
Supervising Deputy Attorney General  
5 AMBER N. WIPFLER, State Bar No. 238484  
Deputy Attorney General  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5721  
Fax: (415) 703-5843  
8 Email: Amber.Wipfler@doj.ca.gov

9 Attorneys for Respondent Warden B. Curry

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14  
15 **WILLIE E. TATUM,**

16 Petitioner,

17 v.

18 **BEN CURRY, Warden,**

19 Respondent.

C 08-0814 TEH

**ANSWER TO THE ORDER TO SHOW  
CAUSE; MEMORANDUM OF POINTS  
AND AUTHORITIES**

Judge: The Honorable Thelton E. Henderson

20  
21 As an answer to the February 5, 2008 petition for writ of habeas corpus filed by state inmate  
22 Willie Tatum, Respondent Warden Ben Curry admits, denies, and alleges the following:

23 1. On October 27, 1982, Tatum was convicted of two counts of kidnaping for the purpose  
24 of robbery. (Pet., p. 2.) He is currently serving a sentence of life with the possibility of parole.  
25 (*Id.*)

26 2. On June 29, 2006, Tatum filed a petition for writ of habeas corpus in the Superior  
27 Court of Los Angeles County, alleging that the Board of Parole Hearings unlawfully denied him  
28 parole at his 2005 parole consideration hearing. (Ex. 1, Super. Ct. Pet.) The superior court

1 denied the petition, finding that some evidence supported the Board's decision to deny parole.  
2 (Ex. 2, Super. Ct. Order at 2-3.)

3 3. On July 13, 2007, Tatum raised the same claim in the California Court of Appeal. (Ex.  
4 3, Ct. App. Pet.) The Court of Appeal also denied the petition, finding that the record "amply  
5 satisfies the applicable 'some evidence' standard." (Ex. 4, Ct. App. Order.)

6 4. On October 10, 2007, Tatum raised the same claim in a petition for review to the  
7 California Supreme Court. (Ex. 5, Sup. Ct. Pet.) The Supreme Court summarily denied his  
8 petition. (Ex. 6, Sup. Ct. Docket Sheet.)

9 5. Respondent admits that Tatum exhausted his state court remedies regarding the claim  
10 that the Board's 2005 parole denial violated his federal due process rights. Respondent denies  
11 that Tatum has exhausted his claims to the extent that they are interpreted more broadly to  
12 encompass any systematic issues beyond this claim.

13 6. Respondent admits that the petition is timely under 28 U.S.C. § 2244(d)(1), and that  
14 the petition is not subject to any other procedural bar.

15 7. Respondent denies that the state court denials of habeas corpus relief were contrary to,  
16 or involved an unreasonable application of, clearly established United States Supreme Court law,  
17 or that the denials were based on an unreasonable interpretation of facts in light of the evidence  
18 presented. Tatum therefore fails to make a case for relief under the Anti-Terrorism and Effective  
19 Death Penalty Act of 1996 (AEDPA). 28 U.S.C. § 2254.

20 8. Respondent denies that Tatum has a federally protected liberty interest in parole;  
21 hence, he fails to assert a basis for federal jurisdiction. The Supreme Court has not clarified the  
22 methodology for determining whether a state has created a federally protected liberty interest in  
23 parole. *See Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1 (1979); *Bd. of*  
24 *Pardons v. Allen*, 482 U.S. 369, 374 (1987) (no federal liberty interest without an expectation of  
25 early release); *Sandin v. Connor*, 515 U.S. 472, 484 (1995) (due process limited to freedom from  
26 restraint which imposes "atypical and significant hardship on inmates in relation to ordinary  
27 incidents of prison life."); *Wilkinson v. Austin*, 545 U.S. 209, 229 (2005) (*Sandin* abrogated  
28 *Greenholtz's* methodology for establishing a liberty interest). California's parole statute under

1 the *Sandin* analysis does not impose an “atypical or significant hardship” because a parole denial  
2 does not alter an inmate’s sentence, impose a new condition of confinement, or otherwise restrict  
3 his liberty while he serves his sentence. Accordingly, Respondent asserts that Tatum does not  
4 have a federal liberty interest in parole. Respondent acknowledges that in *Sass v. California*  
5 *Board of Prison Terms*, 461 F.3d 1123 (9th Cir. 2006), the Ninth Circuit held that California’s  
6 parole state creates a federal liberty interest in parole under *Greenholtz*’s mandatory-language  
7 analysis, but preserves the argument.

8 9. Respondent affirmatively alleges that even if Tatum has a federal liberty interest in  
9 parole, he received all due process to which he is entitled under clearly established federal law  
10 because he was provided with an opportunity to be heard and a statement of reasons for the  
11 Board’s decision. *Greenholtz*, 442 U.S. at 16.

12 10. Respondent denies that the some-evidence test is clearly established federal law in the  
13 parole context.

14 11. Respondent affirmatively alleges that the record contains some evidence to support the  
15 Board’s decision that Tatum poses an unreasonable risk of danger to the public. This evidence  
16 includes the egregious nature of Tatum’s crime and Tatum’s inappropriate and combative  
17 behavior during his parole consideration hearing.

18 12. Respondent denies that the Board failed to consider factors tending to indicate Tatum’s  
19 parole suitability under the applicable state regulations. *See* Cal. Code Regs., tit. 15, § 2281.  
20 Respondent affirmatively alleges that the Board considered all relevant, reliable information  
21 before it in making a parole decision.

22 13. Respondent denies that the Board is precluded from considering the circumstances of a  
23 prisoner’s commitment offense when determining parole suitability.

24 14. Respondent denies that the Board’s 2005 parole denial violated Tatum’s federal due  
25 process rights.

26 15. Respondent denies that an evidentiary hearing is necessary in this matter, as the claims  
27 presented can be resolved on the existing state court record. *Baja v. Ducharme*, 187 F.3d 1075,  
28 1078 (9th Cir. 1999).

1 16. Respondent denies that Tatum is entitled to the setting of a parole date or immediate  
 2 release from confinement. Any remedy is limited to the process which is due, which is a new  
 3 Board hearing comporting with due process. *See Benny v. U.S. Parole Comm'n*, 295 F.3d 977,  
 4 984-85 (9th Cir. 2002) (a liberty interest in parole is limited by the Board's exercise of discretion,  
 5 and a due process error does not entitled an inmate to a favorable parole decision).

6 17. Respondent affirmatively alleges that Tatum fails to state or establish any grounds for  
 7 habeas corpus relief.

8 18. Except as expressly admitted in this answer, Respondent denies the allegations of the  
 9 petition.

## 10 MEMORANDUM OF POINTS AND AUTHORITES

### 11 INTRODUCTION

12 Under AEDPA, a federal court may not grant a writ of habeas corpus unless the state court's  
 13 adjudication was either (1) "contrary to, or involved an unreasonable application of, clearly  
 14 established Federal law, as determined by the Supreme Court of the United States;" or (2) "based  
 15 on an unreasonable determination of the facts in light of the evidence presented at the State Court  
 16 proceeding." 28 U.S.C. § 2254(d)(1-2). Here, Tatum claims that the Board's 2005 parole denial  
 17 violated his due process rights. However, Tatum merely alleges a disagreement with the Board's  
 18 analysis, and fails to establish that the state court decisions denying his due process claims were  
 19 contrary to, or an unreasonable application of, clearly established federal law as determined by  
 20 the United States Supreme Court, or were based on an unreasonable determination of the facts.  
 21 As such, Tatum does not provide any grounds for federal habeas relief, and the petition must be  
 22 denied.

23 ///

24 ///

25 ///

26

27

28



ARGUMENT

**THE STATE COURTS' DENIALS OF PETITIONER'S HABEAS CLAIMS WERE NOT CONTRARY TO OR AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW, NOR BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS.**

When, as here, the California Supreme Court denies a petition for review without comment, the federal court must look to the last reasoned decision as the basis for the state court's judgment. *Ylst v. Nunnemaker*, 501 U.S. 797, 803-804 (1991). Here, the last reasoned decision is the California Court of Appeal's September 26, 2007 judgment that some evidence supported the Board's parole denial. (Ex. 6.) Because nothing in the record indicates that this decision was either contrary to, or an unreasonable application of, clearly established federal law, or based on an unreasonable interpretation of the facts, the provisions of AEDPA mandate that Tatum's claim for habeas relief be denied. 28 U.S.C. §2254(d)(1-2).

**A. Tatum Fails to Demonstrate That the State Court Decisions Were Contrary to Clearly Established Supreme Court Law.**

The first standard of AEDPA is that a state court habeas decision may not be overturned unless it is contrary to, or involves an unreasonable interpretation of, clearly established federal law. "Clearly established federal law" refers to "the holdings, as opposed to the dicta, of [the United States Supreme] Court's decisions as of the time of the relevant state-court decision." *Williams (Terry) v. Taylor*, 529 U.S. 362, 412 (2000). As such, for purposes of AEDPA, "[w]hat matters are the holdings of the Supreme Court, not the holdings of lower federal courts." *Plumlee v. Masto*, 512 F.3d 1204, 1210 (9th Cir. 2008).

The only case in which the Supreme Court has addressed the process due in state parole proceedings is *Greenholtz*, 442 U.S. 1. In *Greenholtz*, the Supreme Court held that due process is satisfied when the state provides an inmate with an opportunity to be heard and a statement of the reasons for the parole decision. *Id.* at 16. "The Constitution does not require more." *Id.*<sup>1</sup>

---

1. The Supreme Court has cited *Greenholtz* approvingly for the proposition that the "level of process due for inmates being considered for release on parole includes an opportunity to be heard and notice of any adverse decision" and noted that although *Sandin* abrogated *Greenholtz*'s

1 Thus, as a matter of clearly established federal law, a challenge to a parole decision will fail if the  
 2 inmate has received the protections required under *Greenholtz*. See *Maynard v. Cartwright*, 486  
 3 U.S. 356, 361-62 (1998); *Austin*, 545 U.S. 209, (2005). Because Tatum received both of these  
 4 protections, and does not argue otherwise, he received all process due under clearly established  
 5 Supreme Court law.

6 Tatum alleges that in order to comport with federal due process, the Board's decision must  
 7 be supported by some evidence that he poses a continuing danger to society. However, there is  
 8 no clearly established federal law applying this standard to parole decisions. The Supreme Court  
 9 has held that under AEDPA, a test announced in one context is not clearly established federal law  
 10 when applied to another context. *Wright v. Van Patten*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 743, 746-47  
 11 (2008); *Schriro v. Landrigan*, \_\_\_ U.S. \_\_\_, 127 S. Ct. 1933 (2007); *Carey v. Musladin*, \_\_\_  
 12 U.S. \_\_\_, 127 S. Ct. 649, 652-54 (2006); see also *Plumlee*, 512 F.3d at 1210; *Stenson v.*  
 13 *Lambert*, 504 F.3d 873, 881 (9th Cir. 2007); *Foote v. Del Papa*, 492 F.3d 1026, 1029-30 (9th  
 14 Cir. 2007); *Crater v. Galaza*, 491 F.3d 119, 1126, n. 8 (9th Cir. 2007); *Nguyen v. Garcia*, 477  
 15 F.3d 716, 718, 727 (9th Cir. 2007). The Supreme Court developed the some-evidence standard  
 16 in the context of a prison disciplinary hearing, which is fundamentally different situation than a  
 17 parole proceeding.<sup>2/</sup> *Superintendent v. Hill*, 472 U.S. 445, 457 (1985). Because, under AEDPA,  
 18 the tests and standards developed by the Supreme Court in one context cannot be transferred to  
 19 distinguishable factual circumstances, it is not appropriate to apply the some-evidence standard  
 20 of judicial review to parole decisions.

21  
 22 methodology for establishing the liberty interest, *Greenholtz* remained "instructive for [its]  
 23 discussion of the appropriate level of procedural safeguards." *Austin*, 545 U.S. at 229.

24 2. In *Greenholtz*, 442 U.S. at 14, the Supreme Court specifically distinguished a parole  
 25 consideration hearing from a prison disciplinary hearing, stating that "[p]rocedures designed to elicit  
 26 specific facts, such as those required in *Morrissey*, *Gagnon*, and *Wolff* are not necessarily  
 27 appropriate" in the parole determination context, as a parole hearing is a unique, non-adversarial  
 28 proceeding that is by its very nature subjective. See *Morrissey* 408 U.S. 471 (1972) (establishing  
 process due in parole revocation hearings); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (establishing  
 process due in probation revocation hearings); *Wolff v. McDonnell*, 418 U.S. 539 (1974)  
 (establishing process due in prison disciplinary hearings).

1 Thus, the application of the some-evidence standard to parole decisions is improper under  
2 AEDPA, and is currently under review by an en banc panel of the Ninth Circuit in *Hayward v.*  
3 *Marshall*, 527 F.3d 797 (9th Cir. 2008). See, e.g., *Irons v. Carey*, 505 F.3d 846, 851 (9th Cir.  
4 2007); *Sass*, 461 F.3d at 1128; *Biggs v. Terhune*, 334 F.3d 910 (9th Cir. 2005) (some evidence  
5 standard is “clearly established federal law” in the parole context). Circuit courts may not import  
6 a federal standard used for one set of circumstances into an entirely different set of circumstances  
7 under the guise of “clearly established federal law.” Moreover, AEDPA does not permit relief  
8 based on circuit caselaw. *Crater*, 491 F.3d at 1123, 1126 ( U.S. C. § 2254(d)(1) renders decision  
9 by lower courts non-dispositive for habeas appeals); *Earp v. Ornoski*, 431 F.3d 1158, 1182 (9th  
10 Cir. 2005) (“Circuit court precedent is relevant only to the extent it clarifies what constitutes  
11 clearly established law . . . Circuit precedent derived from an extension of a Supreme Court  
12 decision is not clearly established federal law as determined by the Supreme Court”); *Duhaime v.*  
13 *Ducharme*, 200 F.3d 597, 600-01 (9th Cir. 2000). Therefore, the Ninth Circuit’s use of the  
14 some-evidence standard in the parole context is not clearly established federal law and is not  
15 binding on this Court.

16 Similarly, Tatum’s additional claim that the Board’s reliance on the immutable factor of  
17 his commitment offense violates due process finds no support in Supreme Court precedent.  
18 Although the Ninth Circuit has suggested that this might amount to an additional due process  
19 claim, *Biggs*, 334 F.3d at 917, no clearly established federal law provides that the Board cannot  
20 base a parole denial on the factors of an inmate’s commitment offense or criminal history.  
21 Moreover, the Supreme Court has never held that after a certain period of time, a criminal’s past  
22 behavior is no longer predicative of his future actions.

23 In sum, the only clearly established federal law setting forth the process due in the parole  
24 context is in *Greenholtz*. Tatum does not allege that he failed to receive these protections. Thus,  
25 he has not shown that the state court decisions denying habeas relief were contrary to clearly  
26 established federal law.

27 ///

28 ///

**B. Tatum Fails to Demonstrate that the State Courts Unreasonably Applied Clearly Established Federal Law**

Habeas relief may be granted based on AEDPA's unreasonable-application clause only where the state court identifies the correct governing legal rule from Supreme Court cases but unreasonably applies it to the fact of the particular state case. *Williams*, 529 U.S. at 406. The petitioner must do more than merely establish that the state court was wrong or erroneous. *Id.* at 410; *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). Respondent recognizes that the Ninth Circuit applies the some-evidence standard as clearly established federal law, but even accepting that premise, Tatum is not entitled to federal habeas relief. The some-evidence standard "does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence;" rather, it is satisfied if there is "*any* evidence in the record that could support the conclusion made by the [initial decision-maker]." *Hill*, 472 U.S. at 455-57 (emphasis added); *see also Sass*, 461 F.3d at 1129 ("*Hill's* some evidence standard is minimal").

Here, the California Court of Appeal properly found that some evidence, including the egregious nature of Tatum's commitment offense and the "other factors cited by the Board" (Tatum's history of assaultive behavior and his argumentative behavior during the 2005 parole hearing) supported the Board's decision to deny parole. (Ex. 4; Pet. Ex. A, 2005 Parole Consideration Hearing, at 61-62.) The record amply supports the appellate court's decision. (Pet. Ex. A.). Thus, Tatum fails to establish that the state court's unreasonably applied the some-evidence standard, and his claim should be denied.

**C. Tatum Fails to Demonstrate that the State Court Decisions Were Based on an Unreasonable Determination of the Facts.**

The second standard under AEDPA is that a state court habeas decision must be based on a reasonable determination of the facts in light of the evidence presented. 28 U.S.C. § 2254(d)(2). The state court's factual determinations are presumed to be correct, and the petitioner bears the burden of rebutting that presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *Juan H. v. Allen*, 408 F.3d 1262, 1270 (9th Cir. 2005). Tatum fails to do so, as some evidence in the record supports the Board's finding. Furthermore, he does not provide

1 any evidence to show that the Board's determination of parole suitability violated federal due  
 2 process. Tatum may disagree with the Board's analysis, but that is not sufficient to prove that the  
 3 state courts' decisions to deny habeas relief were objectively unreasonable. Thus, because Tatum  
 4 fails to show that the state courts' factual determinations were unreasonable under AEDPA  
 5 standards, the petition must be denied.

### 6 CONCLUSION

7 Tatum has not demonstrated that the state court decisions denying habeas relief were  
 8 contrary to, or an unreasonable application of, United State Supreme Court authority, or based on  
 9 an unreasonable determination of the facts. The petition should be denied accordingly.

10 Dated: August 28, 2008

11 Respectfully submitted,

12 EDMUND G. BROWN JR.  
 Attorney General of the State of California

13 DANE R. GILLETTE  
 Chief Assistant Attorney General

14 JULIE L. GARLAND  
 Senior Assistant Attorney General

15 JESSICA N. BLONIEN  
 Supervising Deputy Attorney General

16  
 17  
 18  
 19 

20 AMBER N. WIFFLER  
 Deputy Attorney General  
 Attorneys for Respondent Warden B. Curry

21  
 22  
 23 20137681.wpd  
 SF2008200213

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Tatum v. Curry**

No.: **C 08-0814 TEH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **September 2, 2008**, I served the attached


**ANSWER TO THE ORDER TO SHOW CAUSE; MEMORANDUM OF POINTS AND AUTHORITIES w/Exhibits 1 through 6**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Willie E. Tatum (C-55580)  
Correctional Training Facility  
East Dorm 90/Low  
P.O. Box 689  
Soledad, CA 93960-0686  
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **September 2, 2008**, at San Francisco, California.

M. Luna  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature

# **EXHIBIT 1 (Part 1 of 2)**



Name Willie E. Tatum Jr.Address P.O.Box 689 C.T.F.East Dorm 90 LowSoledad, Ca. 93960CDC or ID Number C-55580**FILED**  
Los Angeles Superior Court

JUN 29 2006

John A. Clarke, Executive Officer/Clerk

By , DeputySuperior Court of California  
For the County of Los Angeles  
(Court)

## PETITION FOR WRIT OF HABEAS CORPUS

Willie E. Tatum Jr.

Petitioner

vs.

No. \_\_\_\_\_  
(To be supplied by the Clerk of the Court)Ben Curry, (Warden)

Respondent

## INSTRUCTIONS — READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

## This petition concerns:

- ☐ A conviction
 ☒ Parole  
☐ A sentence
 ☐ Credits  
☐ Jail or prison conditions
 ☐ Prison discipline  
☐ Other (specify): \_\_\_\_\_

1. Your name: Willie E. Tatum Jr.  
 2. Where are you incarcerated? C.T.F. Soledad State Prison  
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").  
(1982) Conviction for two(2), counts of Kidnap/Robbery concurrent  
with the use of deadly weapon  
 b. Penal or other code sections: P.C.209(b) P.C.211  
 c. Name and location of sentencing or committing court: County of Los Angeles, Pomona  
Superior Court Department East "E"  
 d. Case number: 528706  
 e. Date convicted or committed: 10/27/82  
 f. Date sentenced: 10/27/82  
 g. Length of sentence: 7, years to Life with Possibility of Parole  
 h. When do you expect to be released? Unknown  
 i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:  
Charles Uhalley, Public Defender, for the County of Los Angeles

4. What was the LAST plea you entered? (check one)

☐ Not guilty
 ☒ Guilty
 ☐ Nolo Contendere
 ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury
 ☐ Judge without a jury
 ☐ Submitted on transcript
 ☐ Awaiting trial

6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

SEE ATTACHED

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

SEE ATTACHED

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

7. Ground 2 or Ground \_\_\_\_\_ (if applicable):

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

b. Result: \_\_\_\_\_ c. Date of decision: \_\_\_\_\_

d. Case number or citation of opinion, if known: \_\_\_\_\_

e. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes. ☐ No. If yes, give the following information:

a. Result: \_\_\_\_\_ b. Date of decision: \_\_\_\_\_

c. Case number or citation of opinion, if known: \_\_\_\_\_

d. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

Petitioner did not appeal this decision through the Administrative remedy because the Board of Parole Hearings has eliminated the (BPH) Appeals unit and no longer allows for the filing of Administrative appeals on (BPH) denial of Parole for, Indeterminately sentenced Prisoners such as myself

b. Did you seek the highest level of administrative review available? ☒ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: N/A

(2) Nature of proceeding (for example, "habeas corpus petition"): \_\_\_\_\_

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

b. (1) Name of court: \_\_\_\_\_

(2) Nature of proceeding: \_\_\_\_\_

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

\_\_\_\_\_  
\_\_\_\_\_

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

N/A

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

\_\_\_\_\_  
\_\_\_\_\_

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

\_\_\_\_\_  
\_\_\_\_\_

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

N/A

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: June 26, 2006

► Willie E. Tatum Jr.  
(SIGNATURE OF PETITIONER)

GROUND(1)

"THE BOARD OF PAROLE HEARINGS(hereinafter),THE  
"BOARD" VIOLATED PETITIONER'S DUE PROCESS RIGHT'S  
BY HAVING PETITIONER REMOVED FROM PETITIONER'S  
PAROLE CONSIDERATION HEARING,DEPRIVING PETITIONER  
OF THE RIGHT'S TO BE HEARD AN ASK QUESTIONS,AND  
TO SPEAK ON MY OWN BEHALF,VIOLATING THE FIFTH AND

FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION"

On September 15th,2005 Willie E. Tatum Jr.(herinafter),Petitioner  
went before the board for Petitioner's Twelfth(12th),Parole  
consideration hearing,The hearing was conducted by Commissioner  
Susan Fisher,Deputy Commissioner D.H.Mcbean,Deputy District  
Attorney for the County of Los Angeles Alexis Delagraza,Katera  
Rutledg Attorney for Petitioner,and Petitioner were all present.

"THE FOLLOWING COLLOGUY IS WHAT LED TO PETITIONER'S REMOVAL FROM  
THE HEARING"

[DISTRICT ATTORNEY DELAGRAZA]:"I think the last hearing or the  
hearing before last,they suggested that [Petitioner],Do  
programing with respect to the fact that the victims of  
[Petitioner's],crime were women and the concern was that he had  
sexual aggression issues,did he ever do any self-help or any kind  
of anything on that"]

[Petitioner]:"Excuse me,you said that you read that in some  
transcripts of last years hearing"]

[Commissioner Fisher]:"Wait until the board ask the questions"]



Pursuant to California Penal Code section §3041.5., and California Code of Regulations section §2247 Petitioner is afforded the right to ask and answer questions and to speak on my own behalf and as Petitioner exercised these rights to ask questions and to speak on my own behalf regarding the unsupported claim made by District Attorney Delagrazia, Petitioner was deprived of these rights to do so by Commissioner Fisher (See Estelle v. McGuire, 502 U.S. 62, 65, 112, S.Ct. 475 (1991) States in Pertinent Part: "Violation of State Mandated Procedures Constitute Federal Due Process Violation")

[Deputy Commissioner D.H. Mcbean]: "Hold on is it in the transcripts of the hearing or was it in the transcripts of the decision."

[District Attorney Delagrazia]: "In the report I read that where it indicated what the inmate was told to do I'm trying to find where it was."

Following the question ask by Deputy Commissioner D.H. Mcbean to District Attorney Delagrazia regarding her stated claim Petitioner's Attorney [Katera Rutledge] started conversation regarding an appeal that was granted to Petitioner concerning a therapy issue and after this matter was discuss by the Commissioners and Petitioner's Attorney the conversation returned back to the stated claim made by District Attorney Delagrazia

GROUND(1)

[Petitioner]: "And back to the representative, [The District Attorney], "She said that she read it somewhere I mean, what document is this"]

[Commissioner Fisher]: "Just clam down we're not going to just leave it on record unsolved"]

Petitioner was denied the right again to ask questions regarding to the statement made by District Attorney Delagrazia and deprived of the right to be heard by Commissioner Fisher, (Jancsek v. Oregon Bd. of Parole 833 F.3d 1389,1390(9th Cir.1987)) The court held that; "The Prisoner must be provided with the notice of the hearing, "An opportunity to be heard" citing Greenholtz v. Inmates of Nebraska Penal, 442 U.S. at 16, (1979); See also Morrissey v. Brewer, 408 U.S. 471, 481 (1972), For Petitioner was provided with notice of the hearing, But denied the opportunity to heard.

[Deputy Commissioner D.H.Mcbean]: "Well, it is a good question though, even if it hasn't been posed in the past, and i know you're not interested in talking about the crime today"]

[Petitioner]: "Right"]

[Deputy Commissioner D.H.Mcbean]: "I do notice that in terms of self-help, the only thing you've done is AA, and there was the sexual component of the crime, have you tried to do anything at all in terms of self-help on any sexual issues"]

[Petitioner]: "No because I, what was the conviction?, What is the conviction?]

[Deputy Commissioner D.H.Mcbean]: "Concerning the facts of the crime"]

[Petitioner]: "Okay, but what about the conviction"]

GROUND(1)

[Deputy Commissioner D.H.Mcbean]: "I'm asking the questions"]

[Petitioner]: "What was the conviction, I wasn't convicted of no sexual crime"]

[Commissioner Fisher]: "Mr. Tatum let me give you some advice you're doing the same thing right now that you've been doing in other hearings that have been getting you into trouble, if we're trying to go"]

[Petitioner]: "Get to what -what are you trying to get to Ms. Commissioner"]

[Commissioner Fisher]: "All right get him out of here please"]

[petitioner]: "Can I have my chrono's, give me my chrono's"]

[Commissioner Fisher]: "I'll give them to you later, I'll give it to your Attorney at the end of your hearing, Just for the record, I'm having the officer remove Mr. Tatum from the room, he is not cooperating, He's being combative, and He's argumentative, and we don't need to have him here"]

(SEE EXHIBIT (A) Hearing Transcripts(hereinafter)"HT" starting at Pg.40, Lns.20-27, on through to Pg.44, Lns.1-6)

Furthermore, The unsupported claim made by District Attorney Delagraza did in fact remained on record unsolved, For she did not and could not produce this "Report" as evidence at the hearing to support her stated claim regarding this sexual aggression issue that was fabricated by her, For no such "Report" even exist, For the Board don't issue any reports for any recommendations or suggested programing that the Board may recommend, it would be found in the decision section of a Board transcript after Parole is denied, For an example of this procedure(SEE EXHIBIT (A)"HT" at Decision at Pg.61, Lns.2-5); (SEE ALSO EXHIBIT (A)"HT" at Pg.41, Lns.4-17, Pg.48, Lns.8-22)

GROUND FOR RELIEF

(5)

## GROUND(1)

Overmore, Petitioner procedural right's were violated by the Board Commissioners and the District Attorney for at the outset of the hearing Petitioner invoke the right not to admit to or discuss the crime Pursuant to California Penal Code section §5011(b), and California Code of Regulations section §2236, (SEE EXHIBIT (A)"HT" at Pg.4,Lns.2-14, Pg.7,Lns.5-11); "Violation of state mandated procedures constitute Federal Due Process Violation", (See Estelle v. McGuire, 502 U.S. 62, 65, 112 S.ct. 475 (1991))

Moreover circumstances surrounding the crime in which Petitioner wasn't convicted of still remains as elements of the offense and again Petitioner chose not to discuss the crime, but the unsupported stated claim made by District Attorney Delagrazia and the continuing pressing questions ask by Deputy Commissioner D.H.Mcbean regarding the unsupported claim are questions concerning the crime (SEE EXHIBIT (A)"HT" at Pg.40,Lns.20-27, Pg.43,Lns.1-22); "Violation of state mandated procedures constitute a Federal Due Process Violation only if the Violation causes a Fundamentally unfair result",; (See Estelle v. McGuire, 502 U.S. 62, 65, 112 S.ct. 475, 116))

The unfair result Petitioner was removed from the hearing and was deprived of the right's to ask an answer questions and to be heard regarding the unsupported claim which are circumstances surrounding the crime for which Petitioner wasn't convicted of and chose not to discuss at the hearing violation of Due Process, For Petitioner was denied Parole because Petitioner refuse not to discuss the offense which is Petitioner's right Pursuant to mandated statute and Regulations,; (SEE EXHIBIT (A)"HT" at Pg.57,Lns.21-27, Pg.58,Lns.1-3)

GROUND FOR RELIEF

(6)

## GROUND(1)

Commissioner Fisher's stated reasons for having Petitioner removed from the hearing is unsupported by the record in pertinent part the three reasons for having Petitioner removed from the hearing was as stated by Commissioner Fisher,[Commissioner Fisher]:"He is not cooperating","He's being combative","And he's argumentative"]

Reason (1),Petitioner was not cooperating,for this reason is unfounded an unsupported in view of the record up to Petitioner being removed from the hearing,Respectfully the hearing went off course when District Attorney Delagrazia stated her claim on record and Deputy Commissioner D.H.Mcbean was in full support of this unsupported claim and continued to ask pressing questions regarding this claim,an as Petitioner exercised my right's to question the validity of the stated claim and questions,for i was told by,[Commissioner Fisher]:"To wait until the Board ask the questions"],Violating Petitioner's Right's to ask questions and the right to be heard an as Petitioner continued to exercise my right's to ask questions to be heard and to speak on my own behalf an in doing so Petitioner was viewed by Commissioner Fisher as not being cooperating,"The Prisoner must be provided with notice of the hearing,"an opportunity to be heard",(See Jancsek v. Oregon Bd. of Parole,833 F.2d 1390 (9th Cir.1987));citing Greenholtz,442 U.S. at 16)

For Petitioner was provided with notice of the hearing,But was denied theright to be heard and to ask questions regarding the unsupported claim stated into the record by the Commissioners and the District Attorney,for Petitioner was just simply questioning the validity of the stated claims and questions an in doing so in the opinion of Commissioner Fisher,Petitioner was not cooperating,for the record is unsupported of this finding

(6)

GROUND(1)

Moreover, Pursuant to California Code of Regulations section §2030 subdv.(d),(1) "Hearing Procedures", states in pertinent part:

"The hearing officer shall ensure throughout the hearing that unnecessary, irrelevant or cumulative oral testimony and statements are excluded"

Cal.Code of Regulations section §2030(d),(2), "Role of the Prosecutor", states in part:

"In making comments, supporting documents in the file should be cited"

Commissioner Fisher was the hearing officer in charge of Petitioner's Parole hearing held on 9/15/05, and for the allowance by Commissioner Fisher of the unsupported claim and questions stated an ask by District Attorney Delagraza and Deputy Commissioner D.H.Mcbean in which these statements and questions were in regards to self-help programing concerning sexual aggression issues were unnecessary, irrelevant and cumulative, For this conduct and behavior are violations of Petitioner's Procedural Due Process right's , Petitioner conviction in (1982) , was for kidnap/Robbery, Respectfully there's no need for any self-help programing concerning this matter as mention by the Commissioners as well as the District Attorney, for no such programing even exist, an as Petitioner point out earlier District Atttorney Delagraza claim regarding this made up issuse was unsupported by the record and she did not produce any evidence at the hearing, to support this fabricated claim, For this kind of behavior and conduct is a violation of procedural Due Process rights (See Estelle v. McGuire, 502 U.S. 62, 65, 112 S.ct. 475, 116 L.Ed.2d 385 (1991), ; (See also Gee v. Brown (1975), 14 Cal.3d. 571, 573 [122 Cal. Rptr.231, 536 P.2d 1017])

## GROUND(1)

The second reason for having Petitioner removed from the hearing was also unsupported of the record, The reason stated by, [Commissioner Fisher]: "He's being combative", In view of the record this reason is unfounded for at no point during the hearing and leading up to Petitioner being removed from the hearing did Petitioner take on a position of combativeness for Petitioner's life wasn't in any danger and there was no need or eagerness on Petitioner's behalf to take on such a position ready and willingly to physically fight anyone in the Board room for there were two, (2), Correctional Officers inside the Board room for security and at no point did it take any physical actions on the part of the officers are no mechanical restraints to have Petitioner removed from the hearing, for the record is unsupported of Commissioner Fisher's claim that Petitioner was combative and needed to be removed from the hearing (See Exhibit (A) "HT" starting at Pg. 40, Lns. 20-27, on through to Pg. 44, Lns. 1-6), "The "Some Evidence", standard is satisfied if there is any reliable evidence in the record that could support the conclusions reached" See Powell v. Gomez, 33 F.3d 39, 40 (9th Cir. 1994), citing Superintendent v. Hill, 472 U.S. 445, 455, 456,; Cato v. Rushen, 824 F.2d. 703, 705 (9th Cir. 1987), For there is no evidence in an of the record showing that Petitioner was combative and needed to be removed from the hearing violation of Due Process of law



GROUND FOR RELIEF

(9)

## GROUND(1)

The third reason for having Petitioner removed from the hearing was unsupported of the record,[Commissioner Fisher]:"He's argumentative and we don't need to have him here"],The conversation between Deputy Commissioner D.H.Mcbean and Petitioner was in regards to the unsupported stated claim made by District Attorney Delagrazia,The continuing pressing questions regarding this claim ask by Deputy Commissioner D.H.Mcbean is what led to Petitioner being removed from the hearing and viewed by Commissioner Fisher as Petitioner being argumentative,For Petitioner invoke the right not to admit to or discuss the crime at the outset of the hearing to reiterate circumstances surrounding the offense in which Petitioner wasn't convicted of still remain as elements of the crime,The stated unsupported an unsloved claim made by District Attorney Delagrazia and questions ask by Deputy Commissioner D.H.Mcbean regarding this claim are questions and statements pertaining to the crime violating Due Process of law,(SEE California Penal Code section §5011(b),and California Code of Regulations section §2236);"Violation of state mandated procedures constitute a Federal Due Process violation only if the violation causes a fundamentally unfair result",(See Estelle v. McGuire,502 U.S. 62,65,112 S.ct. 475,116),Respectfully Petitioner's right's were being violated and Petitioner's State appointed Attorney sat by and did not contest the violations of the Board Commissioners and the District Attorney behavior and conduct an at that moment Petitioner exercised the right's to speak on my own behalf and the right to be heard as my right's were being violated,But Petitioner was deprived of these right's to speak and to be heard,See Jancsek v. Oregon Bd.of Parole,833 F.2d at 1390),For there was no evidence in an of the record that Petitioner was argumentative and needed to be removed from the hearing(SEE EXHIBIT (A)"HT" at Pg.43,Lns.1-27, Pg.44,Lns.1-6)

GROUND FOR RELIEF

(10)

## GROUND(1)

Moreover in Commissioner Fisher's Decision to deny Parole she admitted that questions were ask to Petitioner about Petitioner's alleged behavior in the commission of the crime,[Commissioner Fisher]:"He did settle down for a while and started answering questions,but he very quickly became angry and inappropriate,when questions before ask about his insight into his own behavior", An in her Decision to deny Parole her view of Petitioner is different from the stated reasons for having Petitioner removed from the hearing for she now views Petitioner as becoming "Angry and Inappropriate"(SEE EXHIBIT (A)"HT" The Decision at Pg.62,Lns.17-21)

Further the stated words of Commissioner Fisher,in Pertinent part:[Commissioner Fisher]:"When questions before ask about Petitioner's own insight into his own behavior",For this hearing held on 9/15/05 was Petitioner's Twelfth(12th) hearing and from my initial hearing held back in February(1987) up and til my eighth(8th) hearing held back in June(1998),Petitioner discussed the crime in my first eight hearings an in my last four(4) hearing I've chosen not to discuss the crime which is my right by mandated law an in this hearing held on 9/15/05 I invoke my right not to discuss the crime an in her own expressed word's,[Commissioner Fisher]:"When questions before ask about Petitioner's insight into Petitioner's own behavior regarding the crime",For she is speaking of prior Board hearings when Petitioner spoke about the crime,for this is an admission by Commissioner Fisher of violating Petitioner's Procedural right's an abuse of discretion(See Gee v. Brown,14 Cal.3d 571,573,[122 Cal.Rptr.231,536 P.2d 1017]) (See California Penal Code section §5011(b),and California Code of Regulations section §2236)

GROUND(1)

The Procedures in which Petitioner's Parole hearing was being held under for the Commissioners along with the District Attorney conduct was that of deprivation an abuse of discretion, an arbitrariness violating the Fifth and Fourteenth Amendment of the U.S. Constitution, "The presence of a large measure of discretion in a Parole system does not alter the fundamental Due Process limitation against capricious decisionmaking a Legislative grant of discretion dose not amount to a license for arbitrary behavior", (See Gee v. Brown (1975) 14 Cal.3d 571,573,[122 Cal.Rptr.231,536 P.2d 1017])

The Fourteenth Amendment prohibit State actions that deprives a person of life, liberty, or property without Due Process of law, for the procedures attendant to at Petitioner's Parole hearing held on 9/15/05 were not Constitutionally sufficient, (See Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 459-60, 109 S.Ct. 1904, 104 (1989); (See also McQuillion v. Duncan (McQuillion 1), 306 F.3d 895, 900 (9th Cir. 2002))

GROUND (2)

6. GROUNDS FOR RELIEF

**Ground 2** State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

SEE ATTACHED

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

SEE ATTACHED

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

GROUND(2)

"THE BOARD OF PAROLE HEARINGS (hereinafter), THE  
"BOARD CONTINUE TO ILLEGALLY USE PENAL CODE  
SECTION §3041 (b) [THE EXCEPTION] TO FIND  
PETITIONER UNSUITABLE FOR PAROLE RELYING ON  
UNCHANGING FACTORS,THE DECISION WAS ARBITRARY AND  
CAPRICIOUS VIOLATION OF STATE AND FEDERAL DUE  
PROCESS RIGHTS,THERE IS NOT A MODICUM OF EVIDENCE  
THAT PETITIONER IS A CURRENT, THREAT, OR DANGER  
TO SOCIETY OR UNSUITABLE FOR PAROLE"

On September 15th,2005,Petitioner Willie E. Tatum Jr.(hereinafter)  
"Petitioner" went before the Board for Petitioner's Twelfth (12th)  
Parole suitability consideration hearing,Petitioner minimum  
eligible Parole date was February 28th,(1987)

The consequent result of this Board hearing was an erroneous and  
unlawful finding of unsuitability an a release date was not  
granted,Petitioner was given a two (2),year denial and  
Petitioner did not appeal this decision through the Administrative  
remedy because the Board of Parole Hearings has eliminated the  
(BPH) Appeals unit and no longer allows for the filing of  
Administrative appeals on (BPH) denials of Parole for  
Indeterminately sentenced Prisoners such as myself.

"FACTS"

Petitioner is in custody Pursuant to a (1982) Los Angeles County  
conviction for two (2),counts of Kidnap/Robbery concurrent with  
the use of a fire-arm,Petitioner was sentenced to State Prison for  
the term of Seven (7)years to life,which is life with the  
possibility of Parole,(SEE EXHIBIT (A) 2005 Hearing Transcripts  
(hereinafter)"HT"at Pg.1,Lns.2-17/Pg.8,Lns.11-27/Pg.9,Lns.1-8)

GROUND FOR RELIEF

(2)

GROUND(2)

Presiding Commissioner of the hearing was Susan Fisher, Deputy Commissioner D.H.Mcbean, Deputy District Attorney for the County of Los Angeles Alexies Delagraza, Katera Rutledge Attorney for Petitioner and Petitioner were all present.

Petitioner was denied Parole for the Twelfth (12th) time and the decision to deny Parole and the express reasons stated by Commisisoner Fisher was as stated:[Commissioner Fisher]:Reason (1),"The Panel has reviewed all information received from the Public and relied on the following circumstances that Mr.Tatum is not yet suitable for Parole and would pose an unreasonable risk of danger to society or a threat to the Public if release from Prison"

Reason (2)[Commissioner Fisher]:"However in light of other areas that I'm going to be covering, other issues,"That we're U to be discussing the commitment offense is certainly still very viable reason as part of this denial"

Reason (3)[Commissioner Fisher]:"This was an offense that was carried out in a very callous manner, obviously there were multiple victims and the victims were abused during this offense"

Reason (4)[Commissioner Fisher]:"The Prisoner dose have a prior criminal history,and he dose have an unstable social history"

Reason (5)[Commissioner Fisher]:"However he certainly has not successfully participated in beneficial self-help programing"

(SEE EXHIBIT (A) "HT" DECISION Starting at Pg.57, on through to Pg.63)

## GROUND(2)

The first reason stated for denial of Parole was that Petitioner, "Poses an unreasonable Risk, Danger, and Threat to the Public if release from Prison." For this finding is without any supportive evidence in an of the record that Petitioner is a current threat, danger, and risk to society.

If the Board's decision is supported by "Some Evidence," The requirements of Due Process are satisfied, Biggs, 334 F.3d at 915; Jancsek, 833 F.2d 1389 (adopting the "Some Evidence" standard by the U.S. Supreme Court in Superintendent v. Hill, 472 U.S. 445, 456, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985))

For there was no evidence in the record to support the Board's decision that Petitioner poses a current risk, danger, and threat to the Public if release from Prison for this finding was contrary to the evidence that was presented and read into the record by Deputy Commissioner D.H. Mcbean in regards to Petitioner's current "Assessment of Dangerousness" Evaluation Report prepared by C.T.F. Staff Psychologist Dr. William Gamard [Deputy Commissioner D.H. Mcbean]: "It goes through the crime here quite a long time It does indicate that you [Petitioner] are terribly remorseful for committing the crime In terms of an Assessment of Dangerousness, states, "That if release to the Community violence potential is estimated to be no higher than the average citizen in the Community" The evidence relied on by the Board must bear some indicia of reliability and be supported by evidence in the record to support the conclusion reached there is no evidence within the record to support the decision that Petitioner is a current threat, risk, and danger to the Public (SEE Powell v. Gomez, 33 F.3d 39, 40 (9th Cir. 1994) (SEE ALSO EXHIBIT (A) "HT" at Pg. 34, Lns. 17-27, Pg. 35, Lns. 1-14)



## GROUND(2)

Further California Penal Code section §3041(b),and California Code of Regulations title 15. section § 2402(a),and 2281(a) demands that the Board set a release date unless Petitioner currently presents a risk of danger to the Public, For the requirements of Due Process were not met because the evidence relied upon by Commissioner Fisher and the decision that Petitioner still remains a danger and threat to society bears no indicia of reliability;SEE Jancsek,833, F.2d at 1390;ALSO Perveler v. Estelle,974 F.2d 1132,1134(9th Cir.1992) "Violation of State mandated procedures constitute a Federal Due Process violation only if the violation causes a fundamentally unfair result";SEE Estelle v. McGuire,502 U.S. 62,65 112 S.ct.475,116 L.Ed.2d 385 (1991)

The unfair result Petitioner was denied Parole on evidence that didn't bear any indicia of reliability showing are proving that Petitioner is a current threat or danger to society violating the Fifth and Fourteenth Amendment of the U.S. Constitution;SEE Superintendent v. Hill,472 U.S. 445,455-56,105 S.ct.2768, 86 L.Ed.2d 356 (1985)

The second reason stated for denial of Parole was as stated:"We're U [Petitioner] be discussing the commitment offense is certainly still very viable reason as part of this denial"

GROUND FOR RELIEF

(5)

GROUND(2)

For at the outset of the hearing Commissioner Fisher stated into the record;[Commissioner Fisher]:"I do want to remind that you're not required to admit or discuss the offense, but the Panel accepts the finding of the court to be true and also at the outset of the hearing Petitioner invoke the right not to admit to or discuss the offense(SEE EXHIBIT (A)"HT" at Pg.4,Lns.10-14, Pg.7,Lns.5-11)

Pursuant to California Penal Code section §5011b), and California Code of Regulations title 15. section §2236 states in Pertinent Part:"A life Prisoner is afforded the right not to admit to or discuss the offense and by doing so it shall not be held against the Prisoner "Violation of State mandated procedures constitute a Federal Due process violation only of the violation causes a fundamentally unfair result;SEE Estelle v.Mcguire,502 U.S.62,65,112 S.ct.475,116 L.Ed.2d 385 (1991)

The unfair result the second reason stated by Commissioner Fisher to deny Parole was the refusal by Petitioner to not admit to or discuss the offense and by doing so it was indeed held against Petitioner as one of the reasons for denial of Parole violation of Due Process(SEE EXHIBIT (A)"HT" at Decision Pg.57,Lns.21-26, Pg.58,Lns.1-3)

The third stated reason for denial of Parole was as stated,"This offense was carried out in a very callous manner, there were multiple victims, the victims were abused during the offense"

## GROUND(2)

At the outset of the hearing, Commissioner Fisher stated into the record, [Commissioner Fisher]: "I want to remind you that you're not required to admit or discuss the offense, But the panel accepts the finding of the court to be true"] (SEE EXHIBIT (A) "HT" at Pg. 4, Lns. 10-14)

The facts and circumstances surrounding the offense was read from the Probation Officer's Report for there wasn't a trial. Petitioner plead guilty to the offense from a plea agreement and Commissioner Fisher read from this Probation Report, for "No" where within the report did the Probation officer express or stated that the victims of this offense were abused during the commission of this crime, for the recharacterization of the facts of the offense is an abuse of discretion on behalf of Commissioner Fisher, for the Probation Officer's Report is contrary to Commissioner Fisher's version of the facts of the crime, the Probation Officer stated, [Probation Officer]: "The victims were visibly shaken, But physically unhurt", Petitioner admits that the crime was a serious act against the victims and society and the conviction was just but in the commission of the offense the victims did not suffer nor were they hurt or abused in the commission of the offense as Commissioner Fisher stated in her decision to deny Parole, (SEE EXHIBIT (B) Page. 7, Lns. 18-22 of the (1982) Probation Officer's Report), ; "The large measure of discretion in a Parole system dose not alter the fundamental Due Process limitation against capricious decision making, a Legislative grant of discretion dose not amount to a license for arbitrary behavior"; (See Gee v. Brown (1975) 14 Cal.3d 571, 573, [122 Cal.Reptr. 231, 536])

GROUND FOR RELIEF

(7)

## GROUND(2)

Furthermore the facts and circumstances surrounding the offense will forever remain as they were in (2003) The United States District Court for the Eastern District of California (Petitioner) Mike Yellen v. Diane Butler case no.# S-01-2398 MCE GGH P, The court held; "That the fact that continuous reliance on the unchanging circumstances transforms an offense for which California law provides eligibility for Parole into a de facto life imprisonment without the possibility of Parole. The court went on to further express that "What is it about the circumstances of Yellen crime which will ever change? The answer is nothing Petitioner Yellen has no hope for ever obtaining Parole Yellen liberty interest should not be determined by such an arbitrary, remote possibility"

Petitioner Yellen in (1983) was convicted of two(2) counts of Kidnap/Robbery just as Petitioner in the instant case before the court was also convicted of the same crime in (1982), For Petitioner continues to experience denial of Parole for the crime and circumstances surrounding the offense Petitioner has gone before the Board Twelve(12) times an in all Twelve Board hearings the Twelfth hearing at issue the primary reason for denial of Parole has been and continue to be the commitment offense, and circumstances surrounding the crime unchanging factors and circumstances "A continued reliance on an unchanging factor, the circumstances of the offense and conduct prior to imprisonment, runs contrary to the rehabilitation goals espoused by the Prison system and could result in a Due Process violation" 2003 9th Cir.) Biggs, supra, 334 F.3d at 917)

## GROUND(2)

The fourth stated reason for denial of Parole was as stated, "The Prisoner dose have a prior criminal history an a unstable social history"

Petitioner's criminal history is minimal in (1974) Petitioner was sixteen (16) years of age Petitioner was involved in a mutual fight in which the guy that i was fighting with received a broken jaw Petitioner was placed on six (6) months probation and my Father paid for medical bills and restitution Petitioner successfully completed probation and was arrest free for seven (7) years

Seven (7) years later in (1980-81) as an adult Petitioner was arrested for battery involving domestic disputes with my wife an in both cases they were Prosecutor's rejects an in (1981) Petitioner was arrested for receiving stolen property for i had on my person when stop by the Police a switchblade knife for this is the complete minimal criminal history of Petitioner, social history of Petitioner Petitioner worked as a welder and forklift driver in society (SEE EXHIBIT (A)"HT"at Pg.10,Lns.5-27, Pg.11,Lns.1-27, Pg.12,Lns.1-6)

The Board's continued use of charge crimes that did not result in convictions but are stated an express in the decision to deny Parole violates Cal.Penal Code section §3041(b), which allows denial of Parole for past or current convicted offenses and Petitioner's minimal criminal history do not fall within the exception to Cal.Penal Code section §3041(b) for the continual denial of Parole and charged crimes that did not result in convictions is a violation of Due Process an abuse of discretion

GROUND(2)

The fifth and final stated reason for denial of Parole was as stated,"However,he certainly has not successfully participated in beneficial self-help programing"

For this stated reason for denial of Parole is unsupported by the record the documented evidence and the discussion during the hearing regarding Petitioner's self-help and therapy programing during Petitioner's confinement is contrary to Commissioner Fisher's conclusion that Petitioner has not successfully participated in beneficial self-help programing (SEE EXHIBIT (A) "HT" STARTING AT Pg.26,Lns.15-27, on through to Pg.29,Lns.1-5 ; Pg.51,Lns.23-27, Pg.52,Lns.1-5;;Pg.54,Lns.26-27 on through to Pg.56,Lns.1-19)

The Board's use of this reason for denial of Parole is an abuse of discretion an a direct violation of Due Process Cal.Code of Regulations title 15.section §2281(b),and 2402(b),and Cal. Penal Code section §3041(b),and Cal.Penal Code section §3042 subd.(f),(3) states in pertinent part:"All relevant information available to the Panel shall be considered in determinig suitability for Parole";"Violation of State mandated procedures constitute a Federal Due Process violation only if the violation causes a fundamentally unfair result;SEE Estelle v.Mcguire,502 U.S. 62,65,112 S.ct.475,116 L.Ed.2d 385 (1991)

The unfair result Petitioner was denied Parole for this reason and the record of the hearing is devoid of evidence showing that Petitioner has not successfully participated in beneficial self-help programing

GROUND(2)

Moreover the (9th Cir.2003) IN Biggs addressed the Board's illegal usage of needed therapy and other illegal reasons to justify a highly illegal denial of Parole the court concluded: "The record in this case and the transcripts of Bigg's hearing before the Board clearly show that many of the conclusions and factors relied on by the Board were devoid of evidentiary basis"; (Biggs,supra,334 F.3d.at Pg.915);An in Petitioner's hearing as well the transcripts of the 2005 hearing and the conclusions and factors relied on by the Board to deny Parole were also devoid of evidentiary basis

GROUND(2)

In Mcquillion v. Duncan, 306 F.3d 895 (9th Cir. 2002), and again in Biggs v. Terhune, 334 F.3d 910 (9th Cir. 2003), This court fully analyzed the California law governing Parole for life Prisoners, Relying on the United States Supreme court precedent in Greenholtz v. Inmates of Nebraska, 442 U.S. 1 (1979), and Board of Pardons v. Allen, 482 U.S. 369 (1987)

The (9th Cir. 2002) and in (2003) in Mcquillion and Biggs found that California life Prisoners have a liberty interest in Parole that is protected by the Federal Due Process of law

The court in Biggs, supra, addressed the Board's continued illegal usage of the crime and/or prior history to justify a denial of Parole the court held:

"a continued reliance on an unchanging factor, the circumstances of the offense and conduct prior to imprisonment, runs contrary to the rehabilitative goals espoused by the Prison system and could result in a due process violation" (Biggs, supra, 334 F.3d at 917)

Petitioner has now had Twelve (12) , Board hearings and the twelfth (12th), hearing was held on September 15th, 2005, Petitioner submits that the recent denial of Parole rests solely on the commitment offense and therefore violates both State and Federal Due Process of law



## GROUND(2)

Petitioner unlike Petitioner Biggs who was convicted of first degree murder and challenged the denial of Parole following his first Parole hearing, Petitioner in the instant case is challenging the denial of my Twelfth (12th), Parole hearing which resulted in denial of Parole for the Twelfth(12th),time the Board relying on the commitment offense and prior conduct to deny Parole violation by the Board of continued usage of unchanging factors and circumstances surrounding the crime to deny Parole(SEE Biggs,(9th Cir.2003);Biggs,supra,334 F.3d at 917))

The United States District court for the Eastern District of California in (2003)Petitioner Mike Yellen v. Diane Butler case no.# S-01-2398 MCE GGH P,an in (2005)Petitioner Khalifah E.D.Saif'ullah v. Tom Carey case no.# CIV SO22 664 MCEDADP Both Petitioners were convicted of Kidnap/Robbery just as Petitioner is in the case before the court,the District court adopted and cited the (9th Cir.) court in Biggs when held:

"The Board's sole supported reliance on the gravity of the offense and conduct prior to imprisonment to justify denial of Parole can be initially justified as fulfilling the requirements set forth by State law,over time however should Biggs continue to demonstrate exemplary behavior and evidence of rehabilitation,denying him a Parole date simply because of the nature of his offense and prior conduct would raise serious questions involving his liberty intrest in Parole"(id)

## GROUND(2)

Petitioner's initial Parole Hearing was held on february (28th,1987), at which time Parole was denied justifying and fulfilling the requirements set forth by State law as the (9th Cir.),court in BIGGS have express that,"Parole can be initially denied justifying and fulfilling the requirements set forth by State law" The initial justification to deny Parole back in (1987) continues to be repeated by the Board to deny Parole to Petitioner an in Petitioner's case Twelve (12), times over the Board's continuing reliance on the offense and prior conduct to deny Parole violates Petitioner's Due Process and liberty interest in Parole(SEE Biggs,supra,334 F.3d at Pg. 16)

For the past Eighteen (18), years Petitioner has been disciplinary free of any (CDC) 115 write ups, thus demonstrating behavior an evidence of rehabilitation as the (9th Cir.),court in Biggs spoke of, for the Board continues to ignore this evidence thats before the Board showing Petitioner's exemplary behavior an evidence of rehabilitation and programing achievements gained over the years during Petitioner's confinement evidence showing that Petitioner is rehabilitated an is no current,danger or threat to society nevertheless the Board ignores this evidence and continue to rely on the commitment offense and prior conduct to imprisonment to justify continual denial of Parole

Just as in Biggs the record and the transcripts of Petitioner's September 15th,2005 Parole hearing and the conclusions and factors relied on by the Board to continue to deny Parole were deviod of evidentiary basis,(SEE Biggs,supra,334 F.3d at Pg.915)(SEE ALSO Jancsek,833 F.2d 1389,adopting the "Some Evidence standard the Supreme court in Superintendent v. Hill,472 U.S. 445,456,105 S.ct.2768,86 L.Ed.2d 356(1985))

GROUND(2)

Further there is no evidence that Petitioner's crime was particularly egregious for the continual denial of Parole, Petitioner's understanding and perspective of the crime is compelled by the Board's own proportionality matrixs, the matrixs scale and ratings of the more common and routine variations of Kidnap/Robbery appear to be codifications of when a crime of this nature can be more egregious than average, Petitioner submits that my crime falls squarely in the matrixs [Category] of (1), (a), of the California Code of Regulations "CCR" title 15. section §2283 (C), for Kidnap/Robbery time served (8,10,12,) years, Petitioner has now served Twenty Four (24, yrs.) of confinement thus far and with post-conviction credits applied Four(4), months for each year served, Petitioner has now served (384), months=Thirty(32), years of confinement and for the most egregious case of Kidnap/Robbery time served is (13,15,17,) years when the victim injurie's required extensive treatment and the victim was seriously disabled, and for these are not the circumstatnces surrounding Petitioner's crime and Petitioner has exceeded in time served the entire listed matrixs for Kidnap/Robbery, and second degree Murder matrixs time served(19,20,21,) years for Petitioner is currently serving First degree Murder time and for no one was Killed or hurt in the commission of Petitioner's offense  
(SEE EXHIBIT (C) California Code of Regulations "CCR" title 15. section §2283 (C), matrixs for Kidnap/Robbery)

GROUND(2)

The Board's numerous an unlawful conclusions to continue to deny Parole is not supported by any evidence within the record of Petitioner's September 15th, 2005 Parole hearing, and that violates the process due to Petitioner under both State and Federal Constitutions of the United States Fifth and Fourteenth Amendment, The Board's decision cannot be shielded by the "some evidence" standard the only appropriate standard is independent review.

CONCLUSION

The Board's decision was arbitrary and capricious and Petitioner did not receive a fair an impartial hearing nor will i ever. Petitioner prays that the court order Petitioner discharged and/or released from confinement, or at the very least direct the Board to grant a Parole date to Petitioner.

PRAYER FOR REILEF

1. Issue an order to show cause
2. Appoint Counsel
3. Conduct an evidentiary hearing
4. Order Petitioner taken back before the Board for a finding of suitability within thirty(30) days, or order Petitioner released forthwith
5. Any other relief that the court deems fair, just an appropriate

Petitioner Pro se

*Willie E. Tatum Jr.*  
*June 26, 2006*

**EXHIBIT A**

P R O C E E D I N G S

1

2

DEPUTY COMMISSIONER MCBEAN: Okay. We're

3

on record.

4

PRESIDING COMMISSIONER FISHER: Okay.

5

Thank you. This is going to be a Subsequent

6

Parole Consideration Hearing for Willie Tatum

7

CDC Number C-55580. Today's date is 9/15/05 and

8

we're located at the Correctional Training

9

Facility. Inmate was received on 11/2/82 from

10

Los Angeles County. The life term began on

11

11/2/82 and the minimum eligible parole date is

12

2/28/89. The controlling offense for which the

13

inmate has been committed is kidnapping and

14

robbery. Case number A-528706, Count One, Penal

15

Code Section 209(b). Inmate received a term of

16

life. Once again the minimum eligible parole

17

date is 2/28/89. And Mr. Tatum, we're going to

18

be tape recording, so for the purpose of voice

19

identification, for the transcriber, we're each

20

going say our first and last name and spell our

21

last name. I'm going to start with myself, but

22

when I get around to you, I need your CDC number

23

as well. All right?

24

INMATE TATUM: All right.

25

PRESIDING COMMISSIONER FISHER: I'm going

26

to start with myself and go to my left. Susan

27

Fisher, F-I-S-H-E-R, Commissioner.

1           DEPUTY COMMISSIONER MCBEAN: My name is DH  
2 McBean, M-C-B-E-A-N, Deputy Commissioner.

3           DEPUTY DISTRICT ATTORNEY DELAGARZA: Alexis  
4 Delagarza, D-E-L-A-G-A-R-Z-A, Deputy District  
5 Attorney, Los Angeles County.

6           ATTORNEY RUTLEDGE: Tara E. Rutledge, R-U-  
7 T-L-E-D-G-E, Attorney for Mr. Tatum.

8           INMATE TATUM: Willie Tatum, T-A-T-U-M, C-  
9 55580.

10          PRESIDING COMMISSIONER FISHER: Thank you.  
11 Ms. Rutledge, did you have a chance to talk to  
12 Mr. Tatum about the Americans With Disabilities  
13 Act?

14          ATTORNEY RUTLEDGE: Yes.

15          PRESIDING COMMISSIONER FISHER: Okay. Any  
16 accommodations we need to make today?

17          ATTORNEY RUTLEDGE: None.

18          PRESIDING COMMISSIONER FISHER: Okay. I  
19 do want to note for the record that I have the  
20 BPT 1073 Form here, and it was signed by Mr.  
21 Tatum. It was dated by his counselor 11 --  
22 well, it just says 11/4. It doesn't have an  
23 actual date on it, but it was signed by Mr.  
24 Tatum.

25          INMATE TATUM: Who was the counselor?

26          PRESIDING COMMISSIONER FISHER: Rubio.

27          INMATE TATUM: Sometime last year.

1       PRESIDING COMMISSIONER FISHER:    Okay.  It  
2   does state that you didn't have any disabilities  
3   at that time, and that's still correct?

4       INMATE TATUM:   Yes.  Correct.

5       PRESIDING COMMISSIONER FISHER:    Now.  Are  
6   those reading glasses?

7       INMATE TATUM:   Yes.

8       PRESIDING COMMISSIONER FISHER:    Did you do  
9   an Olson Review?

10      INMATE TATUM:   Yes.

11      PRESIDING COMMISSIONER FISHER:    And did  
12   you have your glasses available?

13      INMATE TATUM:   Yes.

14      PRESIDING COMMISSIONER FISHER:    Okay.  
15   Great.  Thank you.  All right.  This hearing is  
16   being conducted pursuant to Penal Code Section  
17   3041 and 3042 and the Rules and Regulations of  
18   the Board of Prison Terms that govern parole  
19   consideration hearings for life inmates.  And as  
20   you know, Mr. Tatum, the purpose of the hearing  
21   today is to consider your commitment offense,  
22   your prior criminal and social history, and your  
23   behavior and programming since you've been in  
24   prison since this offense.  We've had the  
25   opportunity to review your file.  I'm going to  
26   give you the opportunity to make any corrections  
27   that you need to today.  All right?



1 INMATE TATUM: Okay.

2 PRESIDING COMMISSIONER FISHER: We're  
3 going to reach a decision today as to whether or  
4 not we find you suitable for parole. If we do  
5 find you suitable, I'll explain to you today  
6 what the length of your confinement will be.  
7 Before we recess today to deliberate, I'm going  
8 to give you the opportunity, as well as the  
9 District Attorney the opportunity to make a  
10 final statement about your suitability. I do  
11 want you to remind that you're not required to  
12 admit or discuss the offense, but that the Panel  
13 accepts the findings of the Court to be true.  
14 You understand that?

15 INMATE TATUM: Yes.

16 PRESIDING COMMISSIONER FISHER: Okay. The  
17 California Code of Regulations states that  
18 regardless of time served, a life inmate shall  
19 be found unsuitable for and denied parole, if in  
20 the judgment of the Panel, he would pose an  
21 unreasonable risk of danger to society if  
22 released from prison. (indiscernible).

23 INMATE TATUM: Yes. Yes. Yes.

24 PRESIDING COMMISSIONER FISHER: Okay. I  
25 still have to make the record.

26 INMATE TATUM: Yeah.

27 PRESIDING COMMISSIONER FISHER: You have

1 rights related to your hearing that include the  
2 right to a timely notice of the hearing, the  
3 right to review your Central File, and the right  
4 to present relevant documents. Counsel, have  
5 your client's rights been met?

6 ATTORNEY RUTLEDGE: Yes.

7 PRESIDING COMMISSIONER FISHER: All right.  
8 You also have the right, Mr. Tatum, to an  
9 impartial Panel. Having seen your two Panel  
10 members today, do you have any objections to  
11 your Panel?

12 INMATE TATUM: No.

13 PRESIDING COMMISSIONER FISHER: Counsel,  
14 any objections to your Panel?

15 ATTORNEY RUTLEDGE: No.

16 PRESIDING COMMISSIONER FISHER: Okay. I'm  
17 going to give you a written copy of our decision  
18 today. It will be a tentative decision, and it  
19 will be affective within a 120 days, and then a  
20 copy of your decision and a copy of the  
21 transcript of your hearing will be sent to you.  
22 Are you familiar with the changes that took  
23 place last year regarding how you appeal Board  
24 decisions?

25 INMATE TATUM: The 1040 process?

26 PRESIDING COMMISSIONER FISHER: Right.

27 INMATE TATUM: That's no longer --

1       PRESIDING COMMISSIONER FISHER: Right.

2       INMATE TATUM: -- around.

3       PRESIDING COMMISSIONER FISHER: All appeals  
4 now go directly to the Court.

5       INMATE TATUM: Right.

6       PRESIDING COMMISSIONER FISHER: So should  
7 you need additional information about that, your  
8 correctional counselor would have it and it  
9 should also be in the prison library.

10       INMATE TATUM: Okay.

11       PRESIDING COMMISSIONER FISHER: Okay. I  
12 passed the exhibit sheet, Ms. Delagarza, do you  
13 have everything?

14       DEPUTY DISTRICT ATTORNEY DELAGARZA: I do.  
15 Thank you.

16       PRESIDING COMMISSIONER FISHER: Okay. Ms.  
17 Rutledge, do you have everything?

18       ATTORNEY RUTLEDGE: Yes.

19       PRESIDING COMMISSIONER FISHER: Is there  
20 anything that needs to be submitted?

21       DEPUTY COMMISSIONER MCBEAN: I think they  
22 gave a last -- I checked with Mr. Tatum. It  
23 looks like his last chrono, August 5th, 2000, we  
24 received today.

25       PRESIDING COMMISSIONER FISHER: Okay.  
26 Great.

27       DEPUTY DISTRICT ATTORNEY DELAGARZA: I have

1 that.

2 PRESIDING COMMISSIONER FISHER: All right.

3 Do you have any preliminary objections?

4 ATTORNEY RUTLEDGE: None.

5 PRESIDING COMMISSIONER FISHER: And is Mr.

6 Tatum going to be speaking with us today?

7 ATTORNEY RUTLEDGE: No.

8 PRESIDING COMMISSIONER FISHER: Okay. Is  
9 he going to speak on any issues at all, or just  
10 not about the crime?

11 INMATE TATUM: Not about the crime.

12 PRESIDING COMMISSIONER FISHER: Okay. So  
13 when we're going through your social history or  
14 your programming or your disciplinaries, will  
15 you be talking to us about those?

16 INMATE TATUM: I may.

17 PRESIDING COMMISSIONER FISHER: Okay. All  
18 right. Just in case, I need to --

19 INMATE TATUM: Right.

20 PRESIDING COMMISSIONER FISHER: I need to  
21 swear you in. Okay.

22 INMATE TATUM: Okay.

23 PRESIDING COMMISSIONER FISHER: Other hand.

24 INMATE TATUM: All right.

25 PRESIDING COMMISSIONER FISHER: Do you  
26 solemnly swear or affirm that the testimony you  
27 give at this hearing will be the truth and

1 nothing but the truth?

2 INMATE TATUM: Yep.

3 PRESIDING COMMISSIONER FISHER: All right.

4 Counsel, I'm looking at the most recent summary,  
5 which is the November 2 Board Report. Will that  
6 work for you?

7 ATTORNEY RUTLEDGE: That's fine.

8 PRESIDING COMMISSIONER FISHER: All right.  
9 Let me see here. It says under summary of the  
10 crime:

11 On May 21, 1982, at about 2:00 A.M, female  
12 victim Becker and Simon-- that's Susan Becker  
13 and Peggy Simon were forced off the road by the  
14 van. Tatum and Jackson exited the van and  
15 approached the victim's car. The following  
16 individuals remained in the van: Garringer,  
17 Fernandez, and Williams. Tatum was armed with a  
18 loaded revolver and forced his way into the  
19 passenger side of the victim's vehicle. Jackson  
20 threatened the victims with a knife and also  
21 forced his way into the victim's vehicle. The  
22 victims screamed. Victim Becker's brother and  
23 her boyfriend heard the scream and went out to  
24 investigate. Tatum pointed the revolver  
25 directly at the man and told them to get back.  
26 The two men complied with Tatum's order. The  
27 victims were forced to drive away from their

1 location. Tatum ordered Becker to follow the  
2 van. They drove a short distance during which  
3 Tatum and Jackson robbed the victims of their  
4 jewelry. They then ordered the victims out of  
5 their car and into the waiting van. Inside the  
6 van, Tatum ordered the victims to remove their  
7 clothes. Fernandez attempted to unbutton Peggy  
8 Simon's pants. He stopped when he was told to  
9 wait until they got on the freeway. The police  
10 had been contacted by the victim's boyfriend,  
11 and the van was identified. The police spotted  
12 the van and a chase ensued. The chase lasted a  
13 short time. The chase culminated when the van  
14 crashed into a tree. The five defendants then  
15 attempted to escape by running out of the van.  
16 Tatum and Garringer were arrested immediately at  
17 the scene. Remaining defendants were arrested  
18 later near the scene of the crashed van.

19 And it notes the information was obtained  
20 from pages five through eleven of the Probation  
21 Officer's Report. Under prisoners version is --  
22 is this the one you want me to use, Counsel?  
23 The prisoner's version -- or would you prefer a  
24 different one? Let's see. What else is here?  
25 There's a -- the last psych report is 8/21/03.  
26 There's a review of life crime there.

27 **INMATE TATUM:** The findings from the

1 Probation Report and Court. We'll go with that.

2 PRESIDING COMMISSIONER FISHER: Okay. The  
3 (indiscernible) version. All right.

4 INMATE TATUM: Yeah. Go with that.

5 PRESIDING COMMISSIONER FISHER: All right.  
6 Let's see here. Okay. Let's start -- let's  
7 talk about your social history, and I am looking  
8 at the Probation Officer's Report for any prior  
9 arrests or convictions. It says -- under  
10 juvenile it says dependent (indiscernible) that  
11 as a juvenile he was only arrested on one  
12 occasion. It occurred at the age of 16 when he  
13 was arrested for assault with intent to commit  
14 great bodily injury. He explains that he became  
15 involved in a fight and broke the victim's jaw.  
16 He was placed on six months probation and his  
17 father had to pay the restitution amounting to  
18 \$3000. Is that correct?

19 INMATE TATUM: Yeah, that's correct.

20 PRESIDING COMMISSIONER FISHER: Okay.  
21 Under adult history there was an arrest in 1980  
22 for battery. It says no disposition is shown.  
23 This defendant believes this involved a fight  
24 with his wife when he hit her once. She  
25 screamed loudly and the police were called.  
26 They subsequently decided not to file and told  
27 defendant to not hit his wife.

1 INMATE TATUM: What year was that?

2 PRESIDING COMMISSIONER FISHER: It was  
3 September of 1980 -- 1980 disposition.

4 INMATE TATUM: That was prosecutor reject.

5 PRESIDING COMMISSIONER FISHER: It was  
6 prosecutor's reject?

7 INMATE TATUM: Yeah.

8 DEPUTY DISTRICT ATTORNEY DELAGARZA: I'm  
9 sorry. I didn't hear -- which one were you  
10 talking about?

11 PRESIDING COMMISSIONER FISHER: The  
12 September 1980. Is that right? And that does  
13 say prosecutor's reject on the CINI(phonetic) in  
14 May of '81. It says that you were arrested for  
15 receiving stolen property. Let's see here.  
16 This says that your dad gave you a knife and  
17 that you kept it on your person.

18 INMATE TATUM: Right.

19 PRESIDING COMMISSIONER FISHER: And it says  
20 you were stopped by the police and they found  
21 the knife. And that was -- was it a  
22 switchblade?

23 INMATE TATUM: It was a switchblade knife.

24 PRESIDING COMMISSIONER FISHER: All right.  
25 And there was another one with no disposition  
26 known in '81, looks like it was another night.  
27 Apparently they charged you with battery, but



1 they didn't file charges. Is that correct?

2 INMATE TATUM: That's correct.

3 PRESIDING COMMISSIONER FISHER: All right.

4 And then the last one -- the last one they show  
5 is the --

6 INMATE TATUM: Commitment offense.

7 PRESIDING COMMISSIONER FISHER: Yeah.

8 INMATE TATUM: That's it.

9 PRESIDING COMMISSIONER FISHER: Okay.

10 Good. All right. Were you raised by your mom  
11 and your stepfather?

12 INMATE TATUM: Yes, that's correct.

13 PRESIDING COMMISSIONER FISHER: And it  
14 doesn't tell me if you have brothers and  
15 sisters. Do you have any siblings?

16 INMATE TATUM: I have four brothers.

17 PRESIDING COMMISSIONER FISHER: Are they  
18 all older or all younger?

19 INMATE TATUM: Three is under me -- is  
20 younger than I, and one is older.

21 PRESIDING COMMISSIONER FISHER: And are you  
22 in contact with all of them?

23 INMATE TATUM: Yes.

24 PRESIDING COMMISSIONER FISHER: How are  
25 they doing?

26 INMATE TATUM: They're doing good.

27 PRESIDING COMMISSIONER FISHER: How about

1 your mom and her husband. Are they still alive?

2 INMATE TATUM: Still alive.

3 PRESIDING COMMISSIONER FISHER: Still in  
4 LA?

5 INMATE TATUM: In La Quinta, yeah.

6 PRESIDING COMMISSIONER FISHER: Okay. And  
7 are you in pretty constant contact with them?

8 INMATE TATUM: Yes.

9 PRESIDING COMMISSIONER FISHER: Good.

10 Okay. It says that you were married -- now, I'm  
11 looking back at -- this is '03 when the last  
12 psych evaluation was. It says that you were  
13 still legally married at the time, but you were  
14 also engaged. You just had never legally  
15 divorced from your wife, correct?

16 INMATE TATUM: That's true, no.

17 PRESIDING COMMISSIONER FISHER: Has that  
18 changed at all?

19 INMATE TATUM: No.

20 PRESIDING COMMISSIONER FISHER: Are you  
21 still engaged?

22 INMATE TATUM: Yes, I am. And depending on  
23 being paroled, you know, I take care of all  
24 those matters.

25 PRESIDING COMMISSIONER FISHER: All the  
26 logistics?

27 INMATE TATUM: Right.

1       PRESIDING COMMISSIONER FISHER:   Okay.   How  
2   did you meet your fiancée?

3       INMATE TATUM:   I met her through a family  
4   friend of mine.

5       PRESIDING COMMISSIONER FISHER:   Okay.   And  
6   you have a son?

7       INMATE TATUM:   Yes.

8       PRESIDING COMMISSIONER FISHER:   So he must  
9   be around 28 now, does that seem right?

10      INMATE TATUM:   About that.

11      PRESIDING COMMISSIONER FISHER:   And what's  
12   he do?

13      INMATE TATUM:   He's -- unfortunately he's  
14   incarcerated too.

15      PRESIDING COMMISSIONER FISHER:   That's too  
16   bad.

17      INMATE TATUM:   Yeah.

18      PRESIDING COMMISSIONER FISHER:   Is it a  
19   life term?

20      INMATE TATUM:   Yes, it is.

21      PRESIDING COMMISSIONER FISHER:   That's too  
22   bad.   Does he have kids?

23      INMATE TATUM:   No.

24      PRESIDING COMMISSIONER FISHER:   So you're  
25   not a grandfather yet?

26      INMATE TATUM:   No.

27      PRESIDING COMMISSIONER FISHER:   Let's see

1 here. It says that -- under substance abuse  
2 history, it says you never thought of yourself  
3 as an alcoholic, but that now you think looking  
4 back that you probably were. Is that correct?

5 INMATE TATUM: Is that what it says there?

6 PRESIDING COMMISSIONER FISHER: That's what  
7 it says. Is that not right?

8 INMATE TATUM: That is it, yeah.

9 PRESIDING COMMISSIONER FISHER: Because if  
10 it's not right, let's fix it.

11 INMATE TATUM: That's what it is.

12 PRESIDING COMMISSIONER FISHER: Okay. It  
13 says according to your records, you've used PCP  
14 about 40 times, and that you were drinking and  
15 using PCP on the date of the offense. Is that  
16 correct?

17 INMATE TATUM: Yes, that's correct.

18 PRESIDING COMMISSIONER FISHER: And that  
19 you started smoking pot from about the sage of  
20 14.

21 INMATE TATUM: Yes.

22 PRESIDING COMMISSIONER FISHER: Okay.  
23 Anything else? Any other kinds of drugs or  
24 anything?

25 INMATE TATUM: That's it right there.

26 PRESIDING COMMISSIONER FISHER: Okay. Wow,  
27 you got stabbed years ago?

1 INMATE TATUM: Yeah.

2 PRESIDING COMMISSIONER FISHER: It says  
3 that you never fully recovered from it. Is that  
4 true? You still have problems from it?

5 INMATE TATUM: I would say so, yeah. You  
6 know, getting older.

7 PRESIDING COMMISSIONER FISHER: Start --  
8 you start to feel things that you didn't feel  
9 before.

10 INMATE TATUM: Right, yeah.

11 PRESIDING COMMISSIONER FISHER: I can  
12 relate to that.

13 INMATE TATUM: Yeah.

14 PRESIDING COMMISSIONER FISHER: All right.  
15 And anything else about your social history that  
16 I haven't asked you about that you think would  
17 be important for us to know?

18 INMATE TATUM: As far as what did I do, as  
19 far as work?

20 PRESIDING COMMISSIONER FISHER: Just in  
21 general, just anything about you that you think  
22 that we should know about you.

23 INMATE TATUM: I love music. I worked when  
24 I could. That's about it. I like sports. That  
25 kind of stuff.

26 PRESIDING COMMISSIONER FISHER: Okay. I  
27 just want to make sure that I didn't miss or

1 gloss over anything that you thought was  
2 important, that we got it covered. All right.  
3 Let's talk about parole plans. I'm going to  
4 tell you what you it says in the file. And I  
5 have some letters in here too, so I'm going to  
6 through those. It says that you would live with  
7 your mom and your stepfather. Is that correct?

8 INMATE TATUM: Yes, that's correct.

9 PRESIDING COMMISSIONER FISHER: And it also  
10 says that you have skills as a welder, forklift  
11 driver, upholsterer, and small engine repair,  
12 and that you could work in any of those fields.

13 INMATE TATUM: That's correct.

14 PRESIDING COMMISSIONER FISHER: Okay. I'll  
15 tell you what I've got here. I have -- I have a  
16 letter from Dedra Morey (phonetic).

17 INMATE TATUM: That's my fiancée.

18 PRESIDING COMMISSIONER FISHER: She says --  
19 this letter assures my ongoing full support of  
20 Bill Tatum upon his release and during his  
21 incarceration. She says that she's in close  
22 contact with your family and she says they agree  
23 with me to provide financial, emotional support  
24 as needed. Bill is ready and willing to work  
25 and attend school to support himself. There are  
26 many areas Bill has shown an interest in besides  
27 the music field, which he studied while in

1 prison. Bill's inquired about computers. I  
2 talked to the Urban League, which will start him  
3 in a basic training and job skills program as  
4 soon as he's released. He's looking forward to  
5 working with his skills in the church. It says,  
6 I'm currently teaching in the public schools and  
7 also at church. I know Bill will be involved in  
8 positive constructive daily activities. She  
9 says that you would also take care of your  
10 parents. That your dad has cancer and your mom  
11 has asthma and congestive heart failure. Is  
12 that right?

13 INMATE TATUM: Yeah, but my father, he  
14 passed. He passed last year -- last year,  
15 September.

16 PRESIDING COMMISSIONER FISHER: I'm sorry.

17 INMATE TATUM: Yeah.

18 PRESIDING COMMISSIONER FISHER: This must  
19 of been right before that, because this was  
20 stamped September of '04.

21 INMATE TATUM: Right.

22 PRESIDING COMMISSIONER FISHER: And your  
23 stepfather is ill also, I guess. Asthma and  
24 high blood pressure and arthritis is what she  
25 says.

26 INMATE TATUM: Yeah. They getting up in  
27 age. They up in age.

## **EXHIBIT 1 (Part 2 of 2)**



1           PRESIDING COMMISSIONER FISHER: Let's see  
2 here. And she talks about what you've done, the  
3 certificates that you've gotten, and the fact  
4 that she believes that those will certainly help  
5 you find work. And this is another copy of her  
6 letter. And that's all I've gotten in way of  
7 support letters. Is there anything that I  
8 should have that I'm missing here?

9           ATTORNEY RUTLEDGE: No. I also notice that  
10 the C file letters didn't get our file.

11          INMATE TATUM: Right. Here's three more  
12 letters.

13          PRESIDING COMMISSIONER FISHER: Okay. If  
14 you'll give those to the Officer. Thank you.  
15 Do you play a musical instrument?

16          INMATE TATUM: Yes, ma'am.

17          PRESIDING COMMISSIONER FISHER: Multiple  
18 musical instruments?

19          INMATE TATUM: Yes.

20          PRESIDING COMMISSIONER FISHER: What do you  
21 play?

22          INMATE TATUM: The piano is my instrument  
23 of choice and then base guitar.

24          PRESIDING COMMISSIONER FISHER: Have you  
25 had any opportunity to practice while you've  
26 been here?

27          INMATE TATUM: Yeah.

1           PRESIDING COMMISSIONER FISHER: Have you?

2           INMATE TATUM: Yeah.

3           PRESIDING COMMISSIONER FISHER: Good.

4           INMATE TATUM: Yeah.

5           PRESIDING COMMISSIONER FISHER: All right.

6 This is another copy of her letters. Wow. She  
7 sent a bunch of copies.

8           INMATE TATUM: Yeah.

9           PRESIDING COMMISSIONER FISHER: Okay good.  
10 And this is the same letter.

11          INMATE TATUM: Right.

12          PRESIDING COMMISSIONER FISHER: So I'm not  
13 going to through that. We have a letter here --  
14 okay. You're going to have to help pronounce  
15 this name. Is that Morteal (phonetic).

16          INMATE TATUM: Morteal (phonetic).

17          PRESIDING COMMISSIONER FISHER: Morteal  
18 (phonetic) Cobbs, and this is your aunt, right?

19          INMATE TATUM: Yes. My mother's sister.

20          PRESIDING COMMISSIONER FISHER: Okay. She  
21 says, I'm very concerned about the time that he  
22 has spent in prison. She says that I feel that  
23 the Board should give him a date to be released.  
24 I'm hoping that the Board would consider to let  
25 him come back to society. He's always been a  
26 good nephew. He has good background, grew up in  
27 the church, and worked with different

1 auxiliaries. He has a family that loves him and  
2 always will. Okay. Let's see. There's an  
3 opening here somewhere, but I just not seeing  
4 it. Up here -- yes, it is. Looks like it's  
5 been resealed.

6 INMATE TATUM: Yeah. That's coming from  
7 the mailroom.

8 PRESIDING COMMISSIONER FISHER: Okay. I  
9 don't -- I don't want to mess up your letter  
10 here.

11 ATTORNEY RUTLEDGE: Is it open on the side?

12 PRESIDING COMMISSIONER FISHER: I don't  
13 think it is.

14 INMATE TATUM: Looks like it's taped from  
15 the bottom and the top.

16 PRESIDING COMMISSIONER FISHER: It's taped  
17 and I don't want the mess with this letter. All  
18 right. Being as careful as I can here. All  
19 right. And they taped it so well that it was  
20 taped inside the envelope. And this is from  
21 Debra Sweet-Kelly.

22 INMATE TATUM: My first cousin.

23 PRESIDING COMMISSIONER FISHER: Okay. She  
24 says several years, similar correspondence, was  
25 sent to you as a persuasive measure for Willie's  
26 release. Again, several years later, I find  
27 myself corresponding with you again. She says

1 the prolonged duration of his physical  
2 incarceration has caused him to serve and suffer  
3 protracted exclusion from the family he duly  
4 loves. She says -- she's mostly talking about  
5 your -- about the length of your incarceration.  
6 I believe Willie has more than paid his debt and  
7 is no longer a risk to humanity. He deserves a  
8 chance to proof himself in society -- I'm sorry,  
9 prove to himself in society that he's been  
10 rehabilitated and will be an upstanding citizen.  
11 Please use Willie's release to proof to society  
12 that the prison reform system does work. Our  
13 family loves him dearly and will gladly welcome  
14 him with open arms. As a closely knit family,  
15 we will all bond together to keep Willie well  
16 within the realm of positive productive. We are  
17 abundantly blessed to have several church  
18 ministers and officers who are willing to serve  
19 as personal counselors to him in many ways. All  
20 right. Is there anything else about your parole  
21 plans that I haven't asked you about that you  
22 think would be important for us to know?

23 **INMATE TATUM:** In 2003, I contacted a  
24 couple of truck driving schools. That's what I  
25 want to do --

26 **PRESIDING COMMISSIONER FISHER:** Okay.

27 **INMATE TATUM:** -- when I'm paroled, and one

1 school responded back and that's the school  
2 there Imperial Trucking.

3       **PRESIDING COMMISSIONER FISHER:** Imperial  
4 Trucking School and essentially this says,  
5 please find the information that you requested.  
6 They are currently training clients for the  
7 State Department of Rehabilitation, and if you  
8 qualify, that they might pay for your course.  
9 Okay. And this gives you all the information  
10 related to the school and enrollment and what  
11 the classes are and what's required and so and  
12 so forth. That's great. All right. And how  
13 long does it take?

14       **INMATE TATUM:** I would say approximately  
15 two years, at the most, maybe less.

16       **PRESIDING COMMISSIONER FISHER:** Okay.  
17 Anything else that I haven't asked you about?

18       **INMATE TATUM:** That's it, I guess.

19       **PRESIDING COMMISSIONER FISHER:** Okay. If  
20 you'll turn your attention to Commissioner  
21 McBean, she's going to go through your  
22 programming.

23       **DEPUTY COMMISSIONER MCBEAN:** All right.  
24 Mr. Tatum, in this phase of the hearing, we'll  
25 be looking at your institutional adjustment. I  
26 read the C files, the Board Report, the psych  
27 evaluation. If I miss anything, I'll give you

1 and your attorney an opportunity to address some  
2 things. I see you last appeared before the  
3 Board of Prison Terms on 11/19/03. At that time  
4 you were given a one year denial.

5 INMATE TATUM: Yes.

6 DEPUTY COMMISSIONER MCBEAN: You were asked  
7 to remain disciplinary free and to participate  
8 in self-help and therapy as available. You have  
9 a current classification score of -- wait a  
10 minute. Yeah, 19. Custody level is medium AR.  
11 Are you still working for PIA?

12 INMATE TATUM: Yes, ma'am. Yes, I am.

13 DEPUTY COMMISSIONER MCBEAN: All right.  
14 And that's in work products? Is that furniture  
15 factory?

16 INMATE TATUM: Yes.

17 DEPUTY COMMISSIONER MCBEAN: Did you need a  
18 minute with your client?

19 ATTORNEY RUTLEDGE: No, we clarified it.

20 DEPUTY COMMISSIONER MCBEAN: Okay. And it  
21 looks like you have been in the furniture  
22 factory since about '02?

23 INMATE TATUM: Yes, that's correct.

24 DEPUTY COMMISSIONER MCBEAN: And you have  
25 above average or exceptional work reports.  
26 Doing well.

27 INMATE TATUM: Yes.

1 DEPUTY COMMISSIONER MCBEAN: Before that  
2 were you in PIA sewing?

3 INMATE TATUM: Yes, I was.

4 DEPUTY COMMISSIONER MCBEAN: Back in '98  
5 through 2000 to 2001 --

6 INMATE TATUM: Right.

7 DEPUTY COMMISSIONER MCBEAN: Something like  
8 that.

9 INMATE TATUM: Right.

10 DEPUTY COMMISSIONER MCBEAN: All right. So  
11 you've been in PIA for quite a while. Now you -  
12 - you dropped out of high school in the 11th  
13 grade; is that right?

14 INMATE TATUM: Yes.

15 DEPUTY COMMISSIONER MCBEAN: Okay. And  
16 then did you finish your high school or get your  
17 GED?

18 INMATE TATUM: I finished my high school  
19 while incarcerated at DVI Tracy in '91.

20 DEPUTY COMMISSIONER MCBEAN: '91. Okay.  
21 From a vocational standpoint, you have completed  
22 one vocational trade, and that's small engine  
23 repair in '97.

24 INMATE TATUM: Yes.

25 DEPUTY COMMISSIONER MCBEAN: That right?

26 INMATE TATUM: Yes.

27 DEPUTY COMMISSIONER MCBEAN: Okay. Any

1 others? Any other voc trades that you  
2 completed?

3 INMATE TATUM: That's it.

4 DEPUTY COMMISSIONER MCBEAN: Okay. The  
5 file indicates some use of marijuana, PCP,  
6 Benzedrine, amphetamine, cocaine, and alcohol.  
7 Is that correct?

8 INMATE TATUM: Prior to conviction, yes.

9 DEPUTY COMMISSIONER MCBEAN: Prior to the  
10 life crime?

11 INMATE TATUM: Right.

12 DEPUTY COMMISSIONER MCBEAN: There's a  
13 history of that drug use?

14 INMATE TATUM: Right.

15 DEPUTY COMMISSIONER MCBEAN: And from a  
16 self-help standpoint, I saw that you  
17 participated in AA in '96, and in '03, 4 and 5.  
18 Is that right?

19 INMATE TATUM: Well, from '87, from '87 to  
20 now, to 2005.

21 DEPUTY COMMISSIONER MCBEAN: Well, I  
22 couldn't find all those chronos. I'll look  
23 again. I saw one in '96.

24 INMATE TATUM: Right.

25 DEPUTY COMMISSIONER MCBEAN: And that was  
26 the first one I saw. And I saw some in '03, 4  
27 and 5. Did you get chronos along the way giving



1 you credit for your participation?

2 INMATE TATUM: Yes. How many files do you  
3 have there, two?

4 DEPUTY COMMISSIONER MCBEAN: Two, yeah.

5 INMATE TATUM: Where they are?

6 DEPUTY COMMISSIONER MCBEAN: I'll have the  
7 officer bring them. Thanks.

8 DEPUTY COMMISSIONER MCBEAN: Okay. In '96,  
9 '97, '95, '94, '92, '89, I wonder is there a  
10 third file?

11 INMATE TATUM: Could be.

12 DEPUTY COMMISSIONER MCBEAN: Okay. I'm  
13 going to see in a second. I'm going to go look  
14 to see if there is a third file that we don't  
15 have. All right. I'm glad to see that you  
16 maintained copies of those. So do you know the  
17 steps, Mr. Tatum?

18 INMATE TATUM: I know some of them.

19 DEPUTY COMMISSIONER MCBEAN: Do you find  
20 that you use them in your life?

21 INMATE TATUM: Yes.

22 DEPUTY COMMISSIONER MCBEAN: Can you tell  
23 me about one or two that you find that you use  
24 in your daily life?

25 INMATE TATUM: Step one.

26 DEPUTY COMMISSIONER MCBEAN: What is that?

27 INMATE TATUM: Admit to myself, as well as,

1 know that I was powerless over my addiction and  
2 my life had become unmanageable. Step four,  
3 make a list of all the -- essentially, a moral  
4 inventory of myself, which I do that regularly.  
5 And then there's step eight, make a list of all  
6 the people who I have harmed and be willing to  
7 make an amends to the them, if possible.

8 DEPUTY COMMISSIONER MCBEAN: Okay. Did you  
9 do those things?

10 INMATE TATUM: Yes. I do those things,  
11 yeah.

12 DEPUTY COMMISSIONER MCBEAN: Very good.  
13 Okay. Let's see. You also did a anger  
14 management video in a August of '05, and  
15 attended employability -- I think that's video a  
16 as well in December of '04. And in the past  
17 have participated in arts and corrections and I  
18 saw that you played in the band for variation  
19 functions?

20 INMATE TATUM: Right.

21 DEPUTY COMMISSIONER MCBEAN: In the  
22 institution?

23 INMATE TATUM: Right, the children's  
24 Christmas festival.

25 DEPUTY COMMISSIONER MCBEAN: Right. Okay.  
26 So you're part of the institution man?

27 INMATE TATUM: Yes.

1       DEPUTY COMMISSIONER MCBEAN: All right.  
2 Any other self-help that you've done, especially  
3 since your last appearance -- since '03?

4       INMATE TATUM: I've been reading my bible,  
5 you know, I use that. That's self-help for me.

6       DEPUTY COMMISSIONER MCBEAN: Okay.

7       INMATE TATUM: Yeah.

8       DEPUTY COMMISSIONER MCBEAN: Anything else?

9       INMATE TATUM: That's it.

10       DEPUTY COMMISSIONER MCBEAN: That's it?

11       INMATE TATUM: Yeah.

12       DEPUTY COMMISSIONER MCBEAN: Okay. Let's  
13 see. Let's look at your disciplinary history.  
14 You have six CDC 115s, last one being 10/20 of  
15 '89. That was for threatening staff. That's  
16 not a very good one. It states on October 20th,  
17 '89, at approximately 1200 hours, **INMATE TATUM**  
18 threatened me, he stated "Any motherfucker that  
19 crosses me is going to get taken out. I'm a  
20 gangster ass motherfucker, and I'll take care of  
21 the motherfucker my Goddamn self." Sorry, I  
22 have to use that language, but I need to read.  
23 He also pointed out that, "This room is full of  
24 inmates and the guards can't get in here before  
25 they get to you. These comments were made after  
26 I said there wasn't much options left except to  
27 write up inmates who continue to eat in the

1 classroom after several verbal warnings." So  
2 what would you like to tell us about that one?

3 INMATE TATUM: Do you have a copy of that  
4 115 in there?

5 DEPUTY COMMISSIONER MCBEAN: It is the  
6 Central File.

7 INMATE TATUM: Is that the copy of the 115?

8 DEPUTY COMMISSIONER MCBEAN: It's the  
9 original.

10 INMATE TATUM: Is it?

11 DEPUTY COMMISSIONER MCBEAN: Did you say  
12 those things?

13 INMATE TATUM: No. I didn't say those  
14 things. No, I didn't.

15 DEPUTY COMMISSIONER MCBEAN: Okay. What  
16 happened there?

17 INMATE TATUM: That was what 16 years ago.

18 DEPUTY COMMISSIONER MCBEAN: 1989.

19 INMATE TATUM: About that. I don't have no  
20 comment on that, but I will stipulate for the  
21 record that I didn't say those things that he  
22 claimed I said.

23 DEPUTY COMMISSIONER MCBEAN: Well, he was  
24 found guilty of this 115.

25 INMATE TATUM: That's true.

26 DEPUTY COMMISSIONER MCBEAN: I mean, you  
27 know, it is in the Central File and you don't

1 have to speak about it, it's your opportunity to  
2 provide any clarification if you want to -- hold  
3 on.

4 INMATE TATUM: All right.

5 DEPUTY COMMISSIONER MCBEAN: It's your  
6 opportunity to provide clarification if you want  
7 to, and if you don't want to, that's okay.

8 INMATE TATUM: Okay. And I choose not to.

9 DEPUTY COMMISSIONER MCBEAN: You don't want  
10 to comment on it?

11 INMATE TATUM: No.

12 DEPUTY COMMISSIONER MCBEAN: Okay. You  
13 have one on 4/24, '89 -- and I know these were a  
14 while ago, but I just -- are you going to  
15 comment on any of them?

16 INMATE TATUM: No.

17 DEPUTY COMMISSIONER MCBEAN: No?

18 INMATE TATUM: No.

19 DEPUTY COMMISSIONER MCBEAN: All right.

20 4/29, '89 is for disobeying orders. He's told  
21 to go to class and you became argumentative and  
22 wanted to go to smoke. 7/21/86 for possession  
23 of a TV that you shouldn't of had. 5/25/86 for  
24 destruction of state property. In this 115 --  
25 in the steamline, in the dining room, the 115  
26 indicates you broke the glass of the steamline  
27 because you did not want the potatoes that were

1 being served, and staff heard the glass  
2 breaking. And 5/24/85, disobeying orders, you  
3 were housed in cell D 212, refused to stop in  
4 the north quarter for clothed body search.  
5 Tatum stated, "Fuck you." I gave direct order  
6 for him to stop, and ordered him on the wall.  
7 Tatum stated, "You put me on the wall, punk."  
8 Back up was called, and he was searched. And  
9 then (indiscernible), another 115 for disobeying  
10 orders. In the culinary, you were told to leave  
11 the area. Instead of leaving, Tatum tried to  
12 walk around me. I blocked his path by stepping  
13 in front of him and again addressed him to  
14 leave. Tatum refused. At that time, I ordered  
15 Tatum to place his hands on the wall and submit  
16 to a clothed body search. He refused. I placed  
17 my hands on Tatum's arms, turning him towards  
18 the wall. Tatum made several attempts to turn  
19 from the wall and other staff had to come and  
20 assist. You also have four 128s. The last one  
21 being, 11/15/90 for disobeying orders.  
22 11/12/89, became loud and abusive in class.  
23 7/27/89 for absences. 12/5/88, unproductive  
24 behavior in class. And 8/11/83, following a  
25 stabbing assault in the weight lifting area of  
26 the main yard, you were found to be without any  
27 ID. Now, the file indicates that you are a

1 member of the Crips Gang. Los Angeles Crips per  
2 the CDC 812 and the Probation Officer's Report,  
3 and are you still affiliated with the Crips?

4 INMATE TATUM: No.

5 DEPUTY COMMISSIONER MCBEAN: Okay. How  
6 long have you disassociated yourself from the  
7 Crips?

8 INMATE TATUM: It's many, many years prior  
9 to me -- this life commitment.

10 DEPUTY COMMISSIONER MCBEAN: Okay. So you  
11 were not involved in the Crips at the time of  
12 the life crime?

13 INMATE TATUM: Right.

14 DEPUTY COMMISSIONER MCBEAN: Okay. And you  
15 don't have any 115s that would indicate that you  
16 are continuing to affiliate with them. So  
17 that's the good news.

18 INMATE TATUM: That's correct. And no  
19 arrests for affiliation or being a Crip member  
20 or whatever.

21 DEPUTY COMMISSIONER MCBEAN: You mean since  
22 your crime?

23 INMATE TATUM: Prior to and since I've been  
24 incarcerated, as well.

25 DEPUTY COMMISSIONER MCBEAN: Well, unless  
26 the life crime was involving his Crip activity,  
27 but we're not really certain about that. All

1 right. Let's look at the psych evaluation,  
2 8/21/03. According to the psych evaluation  
3 here, you had indicated you were previously  
4 stabbed and that was by your wife?

5 INMATE TATUM: Yes.

6 DEPUTY COMMISSIONER MCBEAN: As this says  
7 you were stabbed by your wife in the left lung.  
8 When was that?

9 INMATE TATUM: That was -- it was '80, or  
10 '81.

11 DEPUTY COMMISSIONER MCBEAN: Why did she  
12 stab you in the left lung?

13 INMATE TATUM: It was a domestic argument.

14 DEPUTY COMMISSIONER MCBEAN: Okay. Was she  
15 injured?

16 INMATE TATUM: Nope.

17 DEPUTY COMMISSIONER MCBEAN: It goes  
18 through the crime here quite a long time. It  
19 does indicate that you are terribly remorseful  
20 for committing the crime. In terms of an  
21 assessment of dangerousness, states that if  
22 released to the community, violence potential is  
23 estimated to be no higher than the average  
24 citizen in the community. It says that since  
25 the inmate has not received any 115 violations  
26 since 10/20/89, during which he was found guilty  
27 for threatening a teacher, he had a total of



1 rules violations from '84 to '89. Since he has  
2 not been involved in any physical violence  
3 during his entire incarceration, it's felt he  
4 would pose a less-than-average risk for violence  
5 when compared to this Level Two inmate  
6 population. And I guess it's using that  
7 analysis then, that reaches the conclusion as  
8 well that violence potential is estimated to be  
9 no higher than average in the community. And  
10 that's my Dr. William Gamard. Okay. Is there  
11 anything else that you'd like to address that we  
12 have missed in terms of your institutional  
13 adjustment or accomplishments during your  
14 incarceration?

15 INMATE TATUM: That about sums it up right  
16 there.

17 DEPUTY COMMISSIONER MCBEAN: Okay.  
18 Anything you'd like to add, Counsel?

19 ATTORNEY RUTLEDGE: No.

20 DEPUTY COMMISSIONER MCBEAN: Okay. Return  
21 to the Chair.

22 PRESIDING COMMISSIONER FISHER: Okay.  
23 You've been disciplinary free for a long time?

24 INMATE TATUM: Yes.

25 PRESIDING COMMISSIONER FISHER: What do you  
26 attribute that to? How do you do that?

27 INMATE TATUM: Maturing, you know, growing

1 up. You have to be accountable and responsible  
2 for your actions. Here I was -- here I am in  
3 prison with a life sentence, and that kind of  
4 behavior and conduct is -- won't cut it. It's  
5 just growing up.

6 PRESIDING COMMISSIONER FISHER: It's just  
7 not a good idea?

8 INMATE TATUM: Yeah, exactly.

9 PRESIDING COMMISSIONER FISHER: So it  
10 sounds like back in the '80s, when you first  
11 came to prison, were you just angry at the  
12 world? Because that's what it sounds like when  
13 she reads what you were doing.

14 INMATE TATUM: It could of been. I believe  
15 so. It could of been.

16 PRESIDING COMMISSIONER FISHER: I was  
17 reading -- I was kind of flipping through some  
18 of your prior decisions back then and in 1997  
19 one of the Commissioners suggested to you that  
20 you needed to get a handle on your anger  
21 problems. What was going -- because that even -  
22 - that was several years after your last 115.

23 INMATE TATUM: He had asked a question --  
24 it was Gillis (phonetic), Commissioner Gillis.  
25 He had asked a question, and I was responding to  
26 the question, and I guess he took it as me  
27 being, you know, over-assertive, or aggressive

1 in the way I was expressing myself.

2 PRESIDING COMMISSIONER FISHER: Okay.

3 INMATE TATUM: And he just leaned back in  
4 his chair, and you need to get a handle on that  
5 anger. And that's my recollection of that.

6 PRESIDING COMMISSIONER FISHER: And what  
7 happened last year with Commissioner Moore  
8 because you had had him before --

9 INMATE TATUM: Right.

10 PRESIDING COMMISSIONER FISHER: -- on your  
11 Panel. And there was some discussion at the end  
12 of your hearing between you and him. What was  
13 going on with that?

14 INMATE TATUM: That's Commissioner Moore.  
15 Commissioner Moore being Commissioner Moore.  
16 That's all I can say to that.

17 DEPUTY COMMISSIONER MCBEAN: I didn't  
18 understand that.

19 INMATE TATUM: (indiscernible).

20 DEPUTY COMMISSIONER MCBEAN: The question  
21 was, what happened, and you want to talk about  
22 your responsibility or what you did, not just  
23 him because he's not here.

24 INMATE TATUM: (indiscernible).

25 PRESIDING COMMISSIONER FISHER: There was  
26 something that he said that you wanted -- let's  
27 see here. That you wanted to -- he said it in

1 his decision, I think, or as he was reading the  
2 decision that you wanted to respond to. Is that  
3 correct? As I recall, he was talking about the  
4 115 where the teacher -- the one that she read  
5 that involved all the language.

6 INMATE TATUM: Right. Right.

7 PRESIDING COMMISSIONER FISHER: And you  
8 said that you wanted to respond to it and he  
9 said no?

10 INMATE TATUM: Right. Right. That's what  
11 it was.

12 PRESIDING COMMISSIONER FISHER: But you  
13 kind of didn't take no as an answer?

14 INMATE TATUM: It's at the decision phase,  
15 you know, as my recollection -- it was brought  
16 up during the hearing, so in the decision phase,  
17 the crime being the primary reason and reason  
18 for the denying, you know, is the 115 for added  
19 weight, and I just ask him could I rebuttal, and  
20 this is during the decision phase. And  
21 Commissioner Moore, being arrogant and  
22 Commissioner Moore that he is, is no, you can't.  
23 There's no rebuttal. So that's what that was.

24 PRESIDING COMMISSIONER FISHER: Right.  
25 Okay. I just wanted to give you an opportunity  
26 to address that because it's part of the  
27 record.

1 INMATE TATUM: That's what it was.

2 PRESIDING COMMISSIONER FISHER: I don't  
3 have any other questions. Do you have anything?  
4 Any questions?

5 DEPUTY DISTRICT ATTORNEY DELAGARZA: I have  
6 a question. The two arrests that the inmate had  
7 in '80 and '81. Those were both domestic  
8 violence batteries. Is that correct?

9 INMATE TATUM: Yes.

10 PRESIDING COMMISSIONER FISHER: Okay.  
11 Remember to answer to me.

12 INMATE TATUM: Yes.

13 DEPUTY DISTRICT ATTORNEY DELAGARZA: I'm  
14 sorry.

15 PRESIDING COMMISSIONER FISHER: I was  
16 talking to him. Go ahead.

17 DEPUTY DISTRICT ATTORNEY DELAGARZA: And  
18 somewhere in here, I read, and I don't see it  
19 ever mentioned again, that his father went to  
20 prison and that his son also went to prison. Is  
21 that correct?

22 PRESIDING COMMISSIONER FISHER: He  
23 mentioned today that his son is in prison. Did  
24 your dad go to prison?

25 INMATE TATUM: Yes.

26 DEPUTY DISTRICT ATTORNEY DELAGARZA: And  
27 why did his father go to prison?

1 INMATE TATUM: I can't recall. I was a kid  
2 when he went.

3 PRESIDING COMMISSIONER FISHER: Okay.

4 DEPUTY DISTRICT ATTORNEY DELAGARZA: Did he  
5 say why his son went to prison?

6 PRESIDING COMMISSIONER FISHER: I don't  
7 think I asked it.

8 INMATE TATUM: No.

9 PRESIDING COMMISSIONER FISHER: Why is your  
10 son in prison?

11 INMATE TATUM: I believe robbery.

12 PRESIDING COMMISSIONER FISHER: Anything  
13 else?

14 DEPUTY DISTRICT ATTORNEY DELAGARZA: Yes.  
15 Going back to one of the reports, or all the  
16 reports, at one point the Commissioners  
17 requested that he get a Cat T. Did the inmate  
18 ever do that?

19 INMATE TATUM: No, I didn't.

20 DEPUTY DISTRICT ATTORNEY DELAGARZA: Also,  
21 in, I think, the last hearing or the hearing  
22 before last, they suggested that he do  
23 programming with respect to the fact that the  
24 victims in this case were women and the concern  
25 was that he had sexual aggression issues. Did  
26 he ever do any self-help or any kind of --  
27 anything on that?

1 INMATE TATUM: Excuse me (indiscernible).

2 PRESIDING COMMISSIONER FISHER: You need  
3 the respond to the Panel.

4 INMATE TATUM: Okay. Okay. You said --  
5 you -- that you read that in some transcripts of  
6 last year's hearing?

7 PRESIDING COMMISSIONER FISHER: Wait until  
8 the Board asks the question. You have to  
9 directly address. (indiscernible).

10 INMATE TATUM: Yes (indiscernible).

11 DEPUTY COMMISSIONER MCBEAN: Hold on. Is  
12 it in the transcript of the hearing or was it in  
13 the transcript of the decision?

14 DEPUTY DISTRICT ATTORNEY DELAGARZA:  
15 (indiscernible) in the report I read that --  
16 where it indicated what the inmate was told to  
17 do and I'm trying to find where it was.

18 ATTORNEY RUTLEDGE: Did the Board note the  
19 appeal that was granted after last year's  
20 decision regarding that he was -- the therapy  
21 issue?

22 PRESIDING COMMISSIONER FISHER: Did they  
23 instruct him to get therapy?

24 ATTORNEY RUTLEDGE: Yes. And it's even  
25 noted in reports. I mean, there's an appellant  
26 decision that's granted in part by the Board,  
27 where it says that he's already been like

1 cleared of having to participate in therapy or,  
2 so we would --

3 PRESIDING COMMISSIONER FISHER: I didn't --  
4 I don't see that here, but I do know that --

5 ATTORNEY RUTLEDGE: I have it right here,  
6 if you would like to review it?

7 PRESIDING COMMISSIONER FISHER: That's  
8 fine. I'll tell you this just so you know that  
9 I know that almost out of habit, some of the  
10 prior Commissioners would say therapy. We're  
11 all aware of the fact that you don't get therapy  
12 unless you're CCCMS or EOP.

13 INMATE TATUM: Okay.

14 PRESIDING COMMISSIONER FISHER: So then  
15 instructing you to therapy --

16 DEPUTY COMMISSIONER MCBEAN: I think  
17 therapy is available. I would like to see that  
18 when you're done with that.

19 PRESIDING COMMISSIONER FISHER: Yeah.

20 INMATE TATUM: And back to the  
21 representative -- she said that she read it  
22 somewhere. I mean, what document is this --

23 PRESIDING COMMISSIONER FISHER: Just calm  
24 down. We're -- we're not going to just leave it  
25 on the record unsolved.

26 INMATE TATUM: Okay.

27 PRESIDING COMMISSIONER FISHER: What --



1       DEPUTY COMMISSIONER MCBEAN: Well, it is a  
2       good question though, even if it hasn't been  
3       posed in the past. And I know you're not  
4       interested in talking about the crime today.

5       INMATE TATUM: Right.

6       DEPUTY COMMISSIONER MCBEAN: I do notice  
7       that in terms of your self-help, the main thing  
8       you've done is AA, and there was the sexual  
9       component of the crime. Have you tried to do  
10      anything at all in terms of self-help on any  
11      sexual issues?

12      INMATE TATUM: No because I -- what is the  
13      conviction? What is the conviction?

14      DEPUTY COMMISSIONER MCBEAN: Concerning the  
15      facts of the crime.

16      INMATE TATUM: Okay. But what about the  
17      conviction?

18      DEPUTY COMMISSIONER MCBEAN: I'm asking the  
19      question.

20      INMATE TATUM: (indiscernible) what was the  
21      conviction? I wasn't convicted of no sexual  
22      crime.

23      PRESIDING COMMISSIONER FISHER: Mr. Tatum.

24      INMATE TATUM: (indiscernible).

25      PRESIDING COMMISSIONER FISHER: Mr. Tatum  
26      (indiscernible) let me give you some advice.  
27      You're doing the same thing right now that

1 you've been doing in the other hearings that has  
2 been getting you into trouble. If we're trying  
3 to go --

4 INMATE TATUM: Get to what -- what are you  
5 trying to get to Ms. Commissioner?

6 PRESIDING COMMISSIONER FISHER: All right.  
7 Get him out of here, please.

8 INMATE TATUM: Can I have my chronos? Give  
9 me my chronos.

10 PRESIDING COMMISSIONER FISHER: I'll give  
11 them to you later. I'll give it to your  
12 attorney at the end of your hearing. Just for  
13 the record, I am having the officer remove Mr.  
14 Tatum from the room. He is not cooperating.  
15 He's being combative and he's argumentative, and  
16 we don't need to have him here.

17 ATTORNEY RUTLEDGE: Can I lodge an  
18 objection -- not to that. But I would just  
19 object to the Deputy Commissioner's previous  
20 questions regarding the facts of the crime  
21 because we don't --

22 PRESIDING COMMISSIONER FISHER: Let me flip  
23 so that we can have it on there.

24 Off the record.

25 DEPUTY COMMISSIONER MCBEAN: Okay. We're  
26 all right. We're on Side Two.

27 PRESIDING COMMISSIONER FISHER: Okay. Go

1 ahead.

2 **ATTORNEY RUTLEDGE:** Just to the -- on  
3 behalf of Mr. Tatum, I want to lodge an  
4 objection specifically -- not to the anger  
5 management issues, but specifically to the  
6 sexual issues. Being that Mr. Tatum does not  
7 have any prior convictions of any sex acts and  
8 that if the Board wants to point to a trial  
9 transcript where there was some kind of  
10 testimony, that would be different. But we  
11 would object on that there is no conviction or  
12 trial transcript indicating that information.

13 **DEPUTY DISTRICT ATTORNEY DELAGARZA:** There  
14 was a preliminary hearing on this case, and I  
15 will give you copies of that next hearing.

16 **PRESIDING COMMISSIONER FISHER:** Okay. That  
17 would be great. That would be good to have.  
18 Thank you. All right. And based on the fact  
19 that -- you know, I don't even know how to  
20 respond to that. I mean, we don't have trial  
21 testimony, but we do have the Probation  
22 Officer's Report that does have statements of  
23 the victims that say that they were told to  
24 remove their clothing.

25 **DEPUTY DISTRICT ATTORNEY DELAGARZA:** Also,  
26 there were statements from codefendants who  
27 indicated that -- that it was the inmate. I

1 believe it was Mr. Fernandez, that was one of  
2 their names. Mr. Fernandez indicated -- and  
3 that's in the Probation Officer's Report that it  
4 was the inmate who --

5 ATTORNEY RUTLEDGE: I would say --

6 DEPUTY DISTRICT ATTORNEY DELAGARZA: --

7 that's consistent with what the victim said.

8 ATTORNEY RUTLEDGE: I would say that it was  
9 a codefendant -- I wouldn't object to bringing  
10 up the statement of the victims, but as far as  
11 the codefendant, I would say there might be a  
12 reliability issue there.

13 DEPUTY DISTRICT ATTORNEY DELAGARZA: There  
14 isn't a reliability issue when it's being used  
15 to corroborate the victims, and if it was just  
16 solely the codefendant, I would say you had a  
17 valid argument, but when it's two victims who  
18 both indicate it's the inmate and then it's  
19 corroborated by a codefendant, I don't think is  
20 a reliability issue at all.

21 PRESIDING COMMISSIONER FISHER: All right.

22 And I agree with that. If it were just the  
23 codefendant, it would be a different issue. But  
24 it's the two victims, and so that it does do is  
25 corroborate the fact that he was indeed the one.  
26 And I think that under the circumstances with  
27 the victim's statements -- although I do want --

1 I'd love to have the trial transcripts. I think  
2 that would be very helpful for this particular  
3 inmate's hearing. I think that it's not  
4 inappropriate to ask him to at least probe those  
5 areas while he's incarcerated. I mean he's done  
6 other stuff too. There's no reason he can't do  
7 this also. He wasn't convicted obviously of  
8 kidnap for rape, but --

9 DEPUTY DISTRICT ATTORNEY DELAGARZA:

10 (indiscernible).

11 PRESIDING COMMISSIONER FISHER: Okay. And  
12 it does, in fact, go to the elements of the  
13 crime and what actually happened.

14 ATTORNEY RUTLEDGE: Right.

15 PRESIDING COMMISSIONER FISHER: So whether  
16 he was convicted of it or not, if the victims  
17 say he was doing it, then it doesn't hurt him to  
18 at least consider that this might be an issue  
19 that he should explore.

20 ATTORNEY RUTLEDGE: Okay.

21 DEPUTY COMMISSIONER MCBEAN: And I might  
22 address, even the institution had an arrest  
23 suffix on him, which is only as a result of  
24 concerns about sex crimes or activity, so from a  
25 custodial level --

26 PRESIDING COMMISSIONER FISHER: Okay. Did  
27 we cover everything? Can we go to close?

1 DEPUTY COMMISSIONER MCBEAN: I think so.

2 PRESIDING COMMISSIONER FISHER: You had  
3 finished, I think.

4 DEPUTY DISTRICT ATTORNEY DELAGARZA: Yeah.

5 PRESIDING COMMISSIONER FISHER: Okay. All  
6 right. Ms. Delagarza, why don't you go ahead  
7 and close.

8 DEPUTY COMMISSIONER MCBEAN: Will you --  
9 were you able to find that comment?

10 DEPUTY DISTRICT ATTORNEY DELAGARZA: No.  
11 I'm going through right now. I saw it in one of  
12 those --

13 DEPUTY COMMISSIONER MCBEAN: Was it a Board  
14 Report where they're telling -- or they were  
15 saying what the Panel said or was it in a prior  
16 transcript?

17 DEPUTY DISTRICT ATTORNEY DELAGARZA: It was  
18 not a transcript, it was a report, you know, so  
19 I know it was a prior hearing. And I'm trying  
20 to find -- it was just something where it said  
21 something about -- looking into the sexual  
22 component of the crime.

23 PRESIDING COMMISSIONER FISHER: Okay.

24 DEPUTY DISTRICT ATTORNEY DELAGARZA: The  
25 inmate makes the best argument of why he is not  
26 suitable for parole. Basically, this man still  
27 has a tremendous violence potential that is just

1 below the surface, as was indicated throughout  
2 this hearing. And going through past hearings,  
3 it appears to be a common thread throughout this  
4 inmate's incarceration. What's very troubling  
5 about this particular inmate is the, not only  
6 the violence that was exhibited, but the  
7 potential for additional violence, and that I'm  
8 talking about the fact that the two women would  
9 have been raped were it not for the fact that  
10 the police actually stopped them before they  
11 could initiate the crime. And this was not a  
12 robbery as the inmate would like this Panel to  
13 believe. If you go through the facts of this  
14 particular case, the victims had already been  
15 robbed. After they were robbed, they forced  
16 into a van, and at that point, they were told to  
17 disrobe. So it wasn't a situation where they  
18 needed to be taken some place for the purposes  
19 of robbery. They were taken some place, they  
20 were robbed, and they were forced into a van  
21 with, I believe, four other individuals and  
22 there was no reason for doing that other than  
23 what was actually stated and that was, they were  
24 told to disrobe and the inmate said he was going  
25 to fuck them. So with respect to that, we have  
26 the fact that these victims were particularly  
27 vulnerable. What's also interesting about this

1 inmate, is that he has two battery/assault  
2 arrests. Again, the victim in those particular  
3 cases was a woman, so we have that whole issue  
4 of his. He seems to be targeting women as  
5 victims. And going throughout his CDC 115s,  
6 even though their not that recent, again, what  
7 it shows is that this man has a serious violence  
8 potential. He has serious anger management  
9 issues, and until those are resolved and until  
10 the issues relating to the sexual component in  
11 this particular case are resolved favorably for  
12 the inmate, he will continue to pose a threat.  
13 He will not be able to do that until he admits  
14 that and does something with respect to having  
15 insight into that aspect of the crime. Thank  
16 you.

17 PRESIDING COMMISSIONER FISHER: Okay.  
18 Thank you. Before you start, Ms. Rutledge, let  
19 me put a couple of things on the record. First  
20 of all, regarding his appeal. I want to make  
21 sure that we respond to what he talked about.  
22 And the appeal, it does say that the Board  
23 apparently indicated that he -- let's see. They  
24 told him to -- someone made the comment that he  
25 needed more therapy before he could be found  
26 suitable for parole, apparently. And it says,  
27 prisoner contends that the Panel lacked



1 sufficient evidence that he needs therapy.  
2 Appeal granted. It says a review of the Mental  
3 Health Evaluation finds that there are no  
4 recommendations for therapy treatment in the  
5 prisoner's case. Therefore, the wording and  
6 therapy will be stricken from Page 508, Line  
7 Seven of the decision. And that's all it says  
8 related to that issue. Also, I have found, and  
9 I am continuing to look, that I have found at  
10 least one Commissioner that was, Commissioner  
11 Lawlend (phonetic), in 2001, who in the decision  
12 was talking to him about anger management. And  
13 says it looks like a problem with your anger  
14 management or issues with women and she is  
15 suggesting that he look into that issue and  
16 what's available out there for him. And that's  
17 in the middle of a conversation, but that's just  
18 the specific sentence that I found in her  
19 decision. I looked at that, and I'm continuing  
20 to look at anything else that might be related  
21 to that. So if you'd like to go ahead and  
22 close.

23 **ATTORNEY RUTLEDGE:** Thank you. I would  
24 just note on the issue of anger management, that  
25 there is a recent chrono date, August 5th, where  
26 he is currently involved in an anger management  
27 program. It says that with these strategies,

1 INMATE TATUM is now capable of understanding his  
2 anger, controlling his emotions. He is  
3 commended for his efforts to become a productive  
4 citizen, so it looks like he's -- and that was  
5 done by Superintendent Charlie D Walker. So it  
6 looks like he is addressing that issue. And I  
7 think -- I want to say that when (indiscernible)  
8 she said that he would want us to believe, but  
9 he hasn't talked about the facts of the crime.  
10 I don't think -- we don't really know whether or  
11 not he's -- he has said he has accepted the  
12 facts as the Board read them, so I don't think  
13 he is trying to mislead the Panel on facts of  
14 the crime. I'm just going through his  
15 suitability factors. He actually prepared a  
16 statement, which I'm glad he did now that he's  
17 not in the room. But I'll simply read from it  
18 on his behalf.

19 PRESIDING COMMISSIONER FISHER: Thank you.

20 ATTORNEY RUTLEDGE: He has not had any  
21 disciplinary write ups in 16 -- 15 or 16 years.  
22 He has done a number of things while he's been  
23 incarcerated that the Chair fully covered  
24 regarding his -- he finished up a voc trade of  
25 small engine repair. He's been working in the  
26 furniture factory since '02. He's got good  
27 chronos for that. Also, for sewing, he's been

1 active in the institution musically playing with  
2 the institutional band. So I think he is  
3 programming, and he did completely his GED in  
4 1991, and he has served 23 years. I would note,  
5 too, that he was cooperative with police at the  
6 time of his arrest, which is noted in his file.  
7 He has firm parole plans to reside with his  
8 parents as indicated in letters provided by his  
9 fiancée. They have looked into him getting  
10 additional training. He does want to go to  
11 truck driver school, but it notes in a Board  
12 Report that has skills under the assessment of  
13 the Board Report dated November 2004, it says  
14 Tatum should have successful parole because he  
15 has marketable skills and letters of support for  
16 residence and employment. So he does have  
17 something to go home to and firm realistic plans  
18 regarding employment. And he also prepared a  
19 response to the 3042 notice. He says that in  
20 1982, the DA offered him a plea deal, which all  
21 parties agreed to the terms of the plea  
22 agreement. It was him to plead guilty to two  
23 counts of kidnap, both to run concurrently, and  
24 the idea the sentence was life with parole. Now  
25 having served 23 years, the DA continues to  
26 oppose parole primarily on the circumstances  
27 surrounding the commitment offense. That will

1 never change. He indicates the plea agreement  
2 was life without parole not life without -- was  
3 life with parole, not life without. Having  
4 exceeded the statutory time prescribed by law  
5 for the commitment offense by six years, and it  
6 also -- with the records showing that he is  
7 remorseful and rehabilitated and having been  
8 duly punished for the crime. So I guess he's  
9 responding to the DA's 3042 notice.

10 **DEPUTY COMMISSIONER MCBEAN:** Let me respond  
11 to that on record. The Board is not bound by  
12 any plea agreements that were made by the  
13 District Attorney's office. The Board is  
14 charged under the law to determine suitability  
15 based on the inmate's factors of suitability  
16 versus his factors of unsuitability. And what  
17 he agreed to with the District Attorney's office  
18 as far as what his sentence would be, was  
19 between the inmate and the District Attorney.  
20 If he is going to be found suitable for parole  
21 and released from prison, he has to meet the  
22 requirement of suitability and satisfy the Board  
23 and then the governor that he's indeed  
24 rehabilitated and suitable for parole. Go  
25 ahead.

26 **ATTORNEY RUTLEDGE:** Okay. What he's been  
27 doing -- some other details about his post-

1 conviction programming. He's been a member of  
2 AA for 18 years, or at least he provided chronos  
3 to the Board going as far as back as '89. That  
4 we have a record of, I believe.

5 DEPUTY COMMISSIONER MCBEAN: NA/AA is --  
6 actually it looks like it started in '90 and  
7 looks like he started doing some videos in '89,  
8 so, yeah.

9 ATTORNEY RUTLEDGE: Okay. And it looks  
10 like in '88 he made a video on the effects of  
11 drugs and alcohol abuse while at DVI where they  
12 were reaching out to community children. In  
13 '98, he indicates that he completed a parenting  
14 class. And '99, I think he covered that he  
15 volunteered for the music group. He's been  
16 working for four years in the furniture factory.  
17 He's also -- he indicates in '97, completed two  
18 sessions of life skills therapy with staff  
19 psychologist Dr. Bateman and Dr. Terini. He  
20 says he completed a three-hour video session,  
21 anger management. And just reiterating the  
22 psych evaluation, the recent one, assessment of  
23 dangerousness if released in the community, his  
24 violence potential would be no higher than the  
25 average citizen in the community. And Mr.  
26 Tatum, in closing, would like to say that he is  
27 a first term. The record reflects his sincere

1 remorse for the victims of the crime. He does  
2 today accept the facts of the crime as read by  
3 the Board. He has in previous reports expressed  
4 and taken full responsibility and accountability  
5 for his actions in the commission of this crime.  
6 And that's documented in several places. He has  
7 worked really hard to program. And he has -- he  
8 did talk to the Board how he's -- why he hadn't  
9 had any write ups in the last 16 years. He says  
10 it's a matter of him maturing and understanding  
11 what's acceptable behavior and what's not. And  
12 he says he has shown -- she's wanting the Board  
13 to recognize that he has tried very hard while  
14 he's been in confinement to really turn things  
15 around, and that he's really willing to work  
16 hard at living a law-abiding life, and he  
17 requests a grant of parole today. Thank you.

18 **PRESIDING COMMISSIONER FISHER:** Thank you.

19 We will go to recess.

20 **R E C E S S**

21 **--oOo--**

22

23

24

25

26

27

CALIFORNIA BOARD OF PAROLE HEARINGS.

D E C I S I O N

DEPUTY COMMISSIONER MCBEAN: Back on record.

PRESIDING COMMISSIONER FISHER: Thank you. I want to note for the record that everyone who was previously in the room and identified themselves have returned to the room, with the exception of Mr. Tatum. And as was noted on the record earlier, I asked the officers to remove Mr. Tatum after he became quite combative and argumentative during his hearing. The Panel has reviewed all of the information received from the public and relied on the following circumstances in concluding that Mr. Tatum is not yet suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. This is going to be a two-year denial.

Certainly the commitment offense was one of the things we considered. This commitment offense was a very serious crime. It was a very long time ago and has been said many times before at many different hearings, the offense will never change. However, in light of other areas that I'm going to be covering, other issues that

1 we're U to be discussing, the commitment offense  
2 is certainly still very viable reason as part of  
3 this denial. This was a kidnap for robbery of  
4 Susan Becker and Peggy Simon. This was an  
5 offense that was carried out in a very callous  
6 manner. Obviously, there were multiple victims,  
7 and the victims were abused during this offense  
8 because they were robbed, and then they were  
9 forced into a van with apparently four men, Mr.  
10 Tatum being one of them. And Mr. Tatum,  
11 according to the victims and corroborated by one  
12 of his crime partners, told them to take off  
13 their clothes because he was going to fuck them.  
14 Whether or not a hand was laid on them, that was  
15 abusive. Those women were terrified. There's  
16 no doubt about it. This was a horrible crime.  
17 It was a crime where these young women had  
18 absolutely no ability to protect themselves.  
19 They were outnumbered, and they were quite  
20 clearly going to be sexually abused had not the  
21 police already been called and proceeded on  
22 their behalf before they were raped. The  
23 prisoner does have a prior criminal history, and  
24 he does have unstable social history. He has --  
25 he has a history of law enforcement contact  
26 related to domestic violence issues in  
27 WILLIE TATUM C-55580 DECISION PAGE 2 9/15/05



1 particular. And in the context with law  
2 enforcement that were listed under his prior  
3 criminal history, there was no disposition or  
4 else they were dismissed, but he's indicated to  
5 us today that there were fights with the wife,  
6 and he indicated to the probation officer in  
7 discussing this arrest that he had hit her.  
8 Also, notably she stabbed him. He also has an  
9 unstable social history related to the fact that  
10 he was between the ages of 13 and 15, by his own  
11 account a member of the Crips. He started  
12 smoking marijuana at the age of 14. He was  
13 involved in using other drugs and also in the  
14 use of alcohol. He said that at the time of the  
15 crime, or at the time being incarcerated, he  
16 didn't believe he was an alcoholic, but looking  
17 back, he believe now that he was. He dropped  
18 out of school in the 11th grade. He also  
19 fathered a child with a woman he was not married  
20 to. He's been programming while he's been  
21 incarcerated. He completed his GED in 1991. He  
22 has vocations. He does seem to have a  
23 marketable skill, and he has participated in  
24 some self-help over the years. He's been  
25 involved in substance abuse programming since  
26 about 1989. However, he certainly has not  
27 WILLIE TATUM C-55580 DECISION PAGE 3 9/15/05

1 successfully participated in beneficial self-  
2 help as was indicated by his behavior in the  
3 hearing today. He's had six 115 disciplinary  
4 reports during his incarceration. The last one  
5 was in 1989. He's had four 128(a) counseling  
6 chronos. The last one, 1990. The psychological  
7 evaluation is dated -- let's see here. It's  
8 dated 8/12/03. It's authored Dr. Gamard, and it  
9 says it's felt that he would pose a less-than-  
10 average risk for violence when compared to the  
11 Level Two inmate population, and if released to  
12 the community, would be estimated to be no  
13 higher than the average citizen in the  
14 community. After today's hearing, I want to  
15 note for the record that I respectfully disagree  
16 with Dr. Gamard's evaluation. He does have  
17 parole plans. He would live with his mother and  
18 her husband, his stepfather. He does have a  
19 fiancée who also indicated her support.  
20 Although, once again, I want to note for the  
21 record he's not divorced from his wife yet, and  
22 stated today that he would take of those matters  
23 when he's released on parole. The Hearing Panel  
24 notes that in response to 3042 notices, the  
25 District Attorney of Los Angeles County had a  
26 representative at the hearing today who spoke in  
27 WILLIE TATUM C-55580 DECISION PAGE 4 9/15/05

1 opposition to a finding of suitability at this  
2 time. The Panel finds that the prisoner needs  
3 to continue to participate in self-help in order  
4 to understand and cope with stress in a  
5 nondestructive manner, specifically also, in  
6 order to continue to address his anger issue  
7 and his inability to control his temper, as  
8 once again was evidenced today at this hearing.  
9 In lieu of his history and his continued  
10 negative behavior, there's no indication that he  
11 would behave differently if paroled. We want to  
12 commend him for the work that he's been doing.  
13 He's been disciplinary free since 1989, and  
14 that's a long time, and he has been programming.  
15 However, currently the positive aspects of  
16 behavior do not outweigh the factors of  
17 unsuitability. In a separate decision, the  
18 Hearing Panel finds that it's not reasonable to  
19 expect that parole would be granted at the  
20 hearing during the following two years.  
21 Specific reasons for this finding are as  
22 follows: Once again, first of all, the  
23 commitment offense. This was the kidnapping of  
24 two women by several men. There Tatum was  
25 aggressive in this crime. He was identified by  
26 both women as well as one of his crime partners  
27 WILLIE TATUM C-55580 DECISION PAGE 5 9/15/05

1 as being the one who told them to take their  
2 clothes off, that they were going to get fucked.  
3 And that kind of behavior toward women is  
4 concerning in light of the combative history  
5 that he had with his wife. Certainly, the fact  
6 that the Commissioners today were women did not  
7 escape our notice either. In fact, all of the  
8 people at the table with Mr. Tatum today were  
9 women, and he was extremely combative and  
10 extremely angry. Almost from the moment that he  
11 walked in the door. He from the time that he  
12 walked in and we started to talk to him, he had  
13 visible attitude about him that made it clear  
14 that he wasn't pleased about the hearing, that  
15 he wasn't particularly interested in what  
16 anybody in the room had to say. And that he  
17 wasn't real interested in being cooperative. He  
18 did settle down for a while and started  
19 answering questions, but he very quickly became  
20 angry and inappropriate when questions before  
21 asked about his insight into his own behavior.  
22 I want to note for the record that it's my  
23 feeling about this hearing that Mr. Tatum was  
24 given every opportunity to respond to questions  
25 in an appropriate manner, and then instead of is  
26 simply answering our questions and even possibly  
27 WILLIE TATUM C-55580 DECISION PAGE 6 9/15/05

1 saying, you know, I've already talked about this  
2 or I'm troubled by the fact that this question  
3 keeps coming up and here is why, instead what he  
4 did was, he became very angry and very  
5 combative, and I think that it's important that  
6 Mr. Tatum really reflect on that because there  
7 seems a real history of that in dealing with the  
8 Commissioners on the Board of Prison Terms. And  
9 that completes the reading of the decision. Do  
10 you have any comments, Commissioner?

11 DEPUTY COMMISSIONER MCBEAN: No further  
12 comments.

13 PRESIDING COMMISSIONER FISHER: Thank you..  
14 That completes the hearing.

15 --oOo--

16

17

18

19

20

21

22

23 PAROLE DENIED TWO YEARS

24 THIS DECISION WILL BE FINAL ON: \_\_\_\_\_

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT

26 DATE, THE DECISION IS MODIFIED.

27 WILLIE TATUM C-55580 DECISION PAGE 7 9/15/05

**EXHIBIT B**

I certify that this image is a true copy per master certification on this fiche.

Name

Matthew D. Vane

Date 12-3-82

I certify that this image is a true copy per master certification on this fiche.

Name

Linn B. Hannon

Date

12-3-82

1 AT THEM AND TOLD THEM TO GET BACK. THEY COMPLIED WITH THIS DEMAND,  
2 AT WHICH TIME VICTIMS WERE FORCED TO DRIVE AWAY FROM THE LOCATION.  
3 TATUM ORDERED SUSAN BECKER TO FOLLOW THE VAN IN FRONT OF HER. THEY  
4 DROVE A SHORT DISTANCE, DURING WHICH TIME TATUM AND JACKSON ROBBED  
5 THE VICTIMS OF THEIR JEWELRY. THEY THEN HAD THE VICTIMS STOP THEIR  
6 CAR, AND THEY TRANSFERRED THEM INTO THE VAN.

7 INSIDE THE VAN, TATUM ORDERED THE VICTIMS TO REMOVE  
8 THEIR CLOTHING. FERNANDEZ ATTEMPTED TO UNBUTTON PEGGY SIMON'S  
9 PANTS BUT WAS TOLD TO WAIT UNTIL THEY GOT ON THE FREEWAY. IN THE  
10 MEANTIME, POLICE HAD BEEN CONTACTED AND THE VAN IDENTIFIED. THE  
11 VAN WAS SPOTTED, AND A CHASE ENSUED. THE CHASE LASTED A SHORT TIME  
12 AND ENDED WITH THE VAN CRASHING INTO A TREE. THE FIVE DEFENDANTS  
13 THEN ATTEMPTED TO ESCAPE. TATUM AND GARRINGER WERE ARRESTED  
14 IMMEDIATELY AT THE SCENE. SEVERAL HOURS LATER, DEFENDANTS WILLIAMS  
15 AND JACKSON WERE ARRESTED NEAR THE AREA WHERE THE VAN CRASHED.  
16 LATER THAT SAME DAY, THE FIFTH DEFENDANT, FERNANDEZ, WAS ARRESTED  
17 AT HOME ON THE BASIS OF A RANEY WARRANT.

18 THE VICTIMS WERE VISIBLY SHAKEN BUT PHYSICALLY  
19 UNHURT. THE JEWELRY WAS FOUND IN POSSESSION OF TATUM AND GARRINGER.  
20 THIS PROPERTY WAS RECOVERED. TATUM TOLD THE POLICE WHERE HE HAD  
21 THROWN THE GUN, WHICH WAS RECOVERED ALONG WITH THE KNIFE USED BY  
22 JACKSON.

23 TATUM TALKED FREELY ABOUT THE OFFENSE AND ABOUT HIS

**EXHIBIT C**



FOR FILING ADMINISTRATIVE REGULATIONS  
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

(c) Matrix for Kidnapping for Robbery or Ransom.

CIRCUMSTANCES

DO NOT WRITE IN THIS SPACE  
V  
I  
C  
T  
I  
M

2282(c) <u>KIDNAP FOR ROBBERY OR RANSOM</u>  Penal Code §209 (in years and does not include post conviction credit provided in §2290)	A. <u>Minor Movement</u>  Movement was of short dura- tion and re- sultant loca- tion would not substantially increase risk of harm.	B. <u>Extensive Movement</u>  Movement was of lengthy duration or resultant location would substantially increase risk of harm.	C. <u>Hostage</u>  Victim was taken as hostage.	D. <u>Planning</u>  The crime : volved intricate planning
I. <u>Minor Injury</u>  Victim unharmed or received minor injury.	8-10-12	9-11-13	10-12-14	11-13-15
II. <u>Victim Assaulted</u>  Victim was sexually assaulted or other- wise seriously injured or assaulted	9-11-13	10-12-14	11-13-15	12-14-16
III. <u>Major Injury</u>  Victim's major injuries required extensive treatment or the victim was seriously disabled.	10-12-14	11-13-15	12-14-16	13-15-17
IV. <u>Death</u>  Victim died.	Use matrix provided in Section 2282(b).			

SUGGESTED BASE TERMS

## **EXHIBIT 2**

**FILED**  
Los Angeles Superior Court

APR 10 2007

John A. Craine, Executive Officer/Clerk

By Joseph M. Pulido, Deputy

JOSEPH M. PULIDO, S.C.C.  
233219

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

In re,

WILLIE E. TATUM, Jr.,

Petitioner,

On Habeas Corpus

Case No.: BH004120

ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered petitioner's Writ of Habeas Corpus filed on June 29, 2006. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the Board's finding that petitioner is unsuitable for parole (See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4<sup>th</sup> 616, 667 (hereafter *Rosenkrantz*)).

Petitioner was received into custody on November 2, 1982 after being convicted of two counts of kidnapping and robbery with the use of a deadly weapon. Petitioner received a term of seven years to life with a minimum eligible parole date of February 28, 1989. The record reflects that on May 21, 1982, the petitioner and four other men kidnapped two female victims at 2:00 a.m. when petitioner, armed with a loaded revolver, forced his way into the victims' car. A co-defendant threatened the victims with a knife. The victims were forced to drive a short distance and were robbed of their jewelry. The victims were then ordered to enter a van where

1 the remaining co-defendants waited. Petitioner demanded that the women take off their clothes  
2 and threatened to sexually assault them. The police, who had been contacted by the victims'  
3 friend, then identified the van. Petitioner was arrested after a brief chase.

4 The record reflects that the Board found petitioner unsuitable for parole after a parole  
5 consideration hearing held September 15, 2005. Petitioner was denied parole for two years. The  
6 Board concluded that petitioner was unsuitable for parole and would pose an unreasonable risk  
7 of danger to society and a threat to public safety. The Board based its decision on several  
8 factors, including his commitment offense.

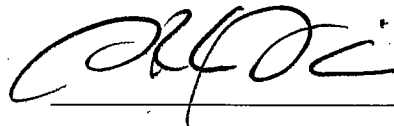
9 The Court finds that there is some evidence to support the Board's finding that multiple  
10 victims were attacked in the same incident (Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(A).)  
11 The Board also found that the offense was carried out in "a very callous manner" (Reporter's  
12 Transcript, 9/15/05, p 58). There is some evidence to support the finding that the offense was  
13 carried out in manner that demonstrates an exceptionally callous disregard for human suffering  
14 (Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(D).) An "exceptionally callous disregard for  
15 human suffering" means the offense in question must have been committed in a more aggravated  
16 or violent manner than that ordinarily shown in the commission of that offense. (*In re Scott*  
17 (2004) 119 Cal. App.4<sup>th</sup> 871, at 891). Here, the two female victims were outnumbered by five  
18 male attackers. The victims were ordered to take off their clothes and threatened with sexual  
19 assault.

20 The record reflects that the Board relied on additional factors in denying parole, and there  
21 is some evidence to support that decision. There is some evidence that petitioner is unsuitable for  
22 parole due to his "history of unstable or tumultuous relationships with others." (Cal. Code Regs.,  
23 tit. 15, §2402, subd. (c)(3).) The record reflects that the petitioner "has a history of law  
24 enforcement contact related to domestic violence issues" (RT, pp.58-59). In determining  
25 suitability, the Board may consider "all relevant, reliable information available" (Cal. Code  
26 Regs., tit. 15, §2402, subd. (b).) The record shows that petitioner's behavior at the parole  
27 suitability hearing was uncooperative and combative (RT, 44). There is some evidence to  
28 support the Board's finding that petitioner could benefit from continuing to participate in self-

1 help to "address his anger issues and his inability to control his temper" (Id, p. 61) based on his  
2 conduct at the parole suitability hearing. Although the Board commended petitioner for the  
3 positive aspects of his behavior, they found that his positive behavior did not outweigh the  
4 factors of unsuitability.

5 Petition for writ of habeas corpus is denied.

6  
7  
8 Dated: 4/10/07



STEVEN VAN SICKLEN  
Judge of the Superior Court

9  
10 Clerk to give notice.



## **EXHIBIT 3**

Name Willie Earn Tatum Jr.Address P.O. Box 689, BD-90/LowSoledad, California93960-0689CDC or ID Number C-55530

ORIGINAL

COURT OF APPEAL - SECOND DIST.

FILED

JUL 13 2007

JOSEPH A. LANE

Clerk

[Signature] Deputy Clerk

California Court of AppealsSecond Appellate District

(Court)

Willie Earn Tatum Jr.

Petitioner

vs.

Ben Curry, Warden

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

B2005 14

No.

(To be supplied by the Clerk of the Court)

## INSTRUCTIONS — READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.



12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: Superior Court, Los Angeles County

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas Corpus

(3) Issues raised: (a) Due Process violation

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): Denied See attached Exhibit (D)

(5) Date of decision: April 10th, 2007 - Case No# BH004120

b. (1) Name of court: \_\_\_\_\_

(2) Nature of proceeding: \_\_\_\_\_

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

N/A

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:  
See Attached Superior Court denial Case No# BH004120

SEE EXHIBIT (D)

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: July 9, 2007

Willie Earle Totum Jr.  
(SIGNATURE OF PETITIONER)



6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

SEE ATTACHED

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

SEE ATTACHED

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

1 This case arises out of the repeated denials of Parole to  
2 Petitioner, Willie E. Tatum Jr., a State prisoner who is a first term  
3 with one arrest as a juvenile and three arrest as an adult. He also  
4 plead guilty to two(2), counts of Kidnap/Robbery ran concurrent and  
5 was sentenced to life with the possibility of Parole. Throughout his  
6 confinement his prison programing and performance has contributed to  
7 him becoming an excellent candidate for Parole.

8 Throughout his incarceration he has participated in programs to  
9 help better himself such helpful programs such as: Anger  
10 Management, "AA", Life Skills, have received favorable and supportive  
11 Psychological evaluations from staff Psychologist over the years and  
12 have establish an excellent work record documented as exceptional an  
13 above average ratings. In short, during his Twenty five(25), years in  
14 prison and for the past eighteen(18), years being disciplinary free  
15 along with positive programing, for all the above stated  
16 accomplishment these factors are not truly considered within  
17 Petitioner's Parole hearing.

18 Furthermore, the evidence of petitioner's performance while  
19 incarcerated is particularly significant. As the Supreme Court has  
20 recognized, "The behavior of an inmate during confinement is critical  
21 in the sense that it reflects the degree to which the inmate is  
22 prepared to adjust to Parole release" Greenholtz, 442 U.S. at  
23 Pg.15, 99, S.ct. 2100.

24 Petitioner has appeared before the Parole Board on twelve(12),  
25 occasions, each time being denied Parole solely on the commitment  
26 offense. These denials are percisely what the Supreme Court was  
27 talking about in Greenholtz v. Nebraska, 442 U.S. at pp.7-8

28 //

1 As the court in Greenholtz, said that, "To insure that a  
2 state-created Parole scheme serve the public interest purpose of  
3 rehabilitation and deterrence, the Parole Board must be cognizant not  
4 only of the factors required by state statute to be considered, but  
5 also the concept embodied in the constitution requiring due process  
6 of law. See also, Biggs v. Terhune, 334 F.3d 910, at 916 (9th  
7 Cir. 2003).

8 These factors underscore why the court in In re Scott(2), 133 Cal.  
9 App. 4th 573, at pg. 595, took pains to reiterate that "The commitment  
10 offense can negate suitability [for parole], only if circumstances of  
11 the crime... rationally indicate that the offender will present an  
12 unreasonable public safety risk if release from prison. "Thus, as this  
13 court of Appeal recently concluded in the matter of In re Lee, 2006  
14 DJDAR 13961 at pg. 13963, the test is not whether "Some evidence"  
15 supports the reasons the Parole Board cites for denying parole, but  
16 whether "Some evidence" indicates a Parole release unreasonably  
17 endangers public safety. (Cal. Code Regs., title 15, §2402  
18 subd. (a), [Parole denied if prisoner "will pose an unreasonable risk  
19 of danger to society if released from prison."]. Therefore, "Some  
20 evidence" of the existence of a particular factor does not  
21 necessarily equate to some evidence the parolee's release  
22 unreasonably endangers public safety. Id.

23 Thus, The court must view the Parole Board's reasons for denial of  
24 petitioner's Parole within the context of the other factors it must  
25 consider to see if some evidence shows he continues to pose an  
26 unreasonable risk to public safety. In re Scott, supra, 133 Cal. App. 4th  
27 at pg. 594-595, applying that test petitioner's asserts the court will  
28 find no evidence that he is likely to commit another crime or that  
his release would unreasonably endanger the public.

1 Petitioner is not attempting to minimize the seriousness of his  
2 offense of 25 years ago, for which society has legitimately punish  
3 him, however, no reasonable possibility exists that petitioner will  
4 reoffend other than the instant case petitioner's criminal history is  
5 minimal to say the least, for there in NO prior convictions one arrest  
6 as a juvenile and three arrest as an adult, (See Exhibit (A)  
7 2005 Board Hearing transcripts (hereinafter "HT"), at pg. 10, Lns. 6-27;  
8 pg. 11, Lns. 1-27; pg. 12, Lns. 1-6)

9 Petitioner is now a middle age man of 50 years of age and who has  
10 accomplish much during his incarceration, for he has acquired an  
11 education and vocations, has taken numerous life skills classes  
12 providing him with the ability to cope with stress and anger, none of  
13 which he possessed at the age of 25 years of age when he committed  
14 the offense.

15 The primary reason the Parole Board cites for its denial of parole  
16 is, "The nature of petitioner's crime" unchanging factors  
17 therefore, the board's decision is not supported by some evidence.

18 Petitioner contends the Superior court erred, when it summarily denied  
19 the petition and failed to identify what evidence contained in the  
20 record supported the board's finding of unsuitability. Petitioner, is  
21 unclear as to whether the court found that "Some evidence" in the  
22 record supported the reasons the board cites for denying parole, or  
23 whether "some evidence" indicates his release unreasonably endangers  
24 public safety.; In re Scott, 2006 DJDAR 13961 at p. 13963; (See  
25 Exhibit (D), The decision from the Superior court denying the petition  
26 on April 10th, 2007)

27 As this court of Appeal found in Lee, "some evidence" of the existence  
28 of a particular factor does not necessarily equate to some evidence  
the parolee's release unreasonably endangers public safety. Id. at  
p. 13963.



1 Furthermore, this court concluded, "The test is not whether some  
 2 evidence supports reasons the the [Board] cites for denying parole, but  
 3 whether some evidence indicates a parole release unreasonably  
 4 endangers public safety. (Cal. Code Regs., title 15, §2402  
 5 subd. (a), "Parole denied if prisoner" will pose unreasonable risk of  
 6 danger to society if release from prison."]; See, e.g., *In re*  
 7 Scott, (2005), 133 Cal. App. 4th 573, 595 [The commitment offense can  
 8 negate suitability for parole only if circumstances of the crime...  
 9 rationally indicate that the offender will present an unreasonable  
 10 safety risk if releases from prison."]

11 Moreover, in accordance with the court of Appeal decision in *In re*  
 12 Lee, the Superior court's denial of the petition failed to reveal the  
 13 Board's reason's of unsuitability within the contex of the other  
 14 factors it must consider to see if some evidence shows petitioner  
 15 continues to pose a current an unreasonable risk to public safety.  
 16 (2006) DJDAR at pp. 13963; See *In re Scott*, supra, 133 Cal. App. 4th at  
 17 pp. 594-595. For the above stated reasons, the petition should be  
 18 return to the Superior court for review consistent with this court of  
 19 Appeal's view's in *In re Scott*, (2006), DJDAR 14(6).

20 "The Board of Parole Hearings Decision Denying Parole Did Not Comport  
 with Due Process"

21 On September 15th, 2005, Petitioner's twelfth (12th), Parole  
 22 consideration hearing was held. The Board of Parole Hearings  
 23 (Board), again denied parole for a period of two (2), years. In the  
 24 Board's decision to deny Parole the Board concluded that, "Petitioner  
 25 continued to pose an unreasonable risk of danger to society or a  
 26 threat to public safety if released from prison", The Board relied  
 27 primarily on the commitment offense the Board found that the offense  
 28 "Was a very serious crime", "The offense was carried out in a very

callous manner", "There were mutiple victims"  
 See exhibit (A) 2005 Board's decision transcripts "BT" at  
 pg. 57, Lns. 12-26; pg. 58, Lns. 4-6

1 Parole suitability decisions for inmate serving indeterminate life  
2 terms are made, in the first instance by the Board. In re Scott, (2004),  
3 119 Cal. App.4th 871, 884-885. The Board has broad discretion and must  
4 normally set Parole release in a manner that provides uniform terms  
5 for offenses of similar gravity and magnitude with respect to public  
6 safety (ibid; Penal Code section, §3041, subd. (a), and must set a Parole  
7 date unless it determines that the gravity of the current or past  
8 convicted offense or offenses are such that public safety requires a  
9 more lengthy period of incarceration. In re Scott, supra at  
10 pp. 885; Penal Code section §3041 subd. (b). That decision is guided in  
11 turn by regulations directing the Board's consideration to six  
12 (6), nonexclusive circumstances tending to show unsuitability,  
13 California Code of Regulations, title 15, section §2402, subd. (c), and  
14 nine (9), tending to show suitability id., section §2402, subd. (d), In  
15 re Scott, supra at pp. 897.

16 According to the applicable regulations circumstances tending to  
17 establish unsuitability for Parole are that the prisoner: (1), committed  
18 the offense in an especially heinous, atrocious, or cruel  
19 manner; (2), possesses a previous record of violence; (3), has an unstable  
20 social history; (4), previously has sexually assaulted another  
21 individual in a sadistic manner; (5), has a lengthy history of severe  
22 mental problems related to the offense; (6), has engaged in serious  
23 misconduct while in prison. (Cal. Code Regs., title 15, section  
24 §2402, subd. (c), In re Rosenkrantz, (200), 29 Cal.4th 616, 653-64 fn.  
25 omitted.

26 Circumstance (1), is supported where (a) multiple victims were  
27 attacked, injured, or killed in the same or separate incidents; (b), The  
28 offense was carried out in a dispassionate and calculated manner, such  
as an execution-style murder; (c), The victims was abused, defiled, or  
mutilated during or after the offense; (d), The offense was carried out

1 in a manner that demonstrates an exceptionally callous disregard for  
 2 human suffering;and(e),The motive for the crime is inexplicable or  
 3 very trivial in relation to the offense, Cal. Code Regs.,title  
 4 15.section §2402,subd.(c),(1)",Rosenkrantz,at pp.653,fn.11.

5 Overmore, The court of appeal recently concluded in the matter of In  
 6 re Lee, (2006), DJDAR 13961 at p.13963, the test is whether "some  
 7 evidence" supports the reasons the board cites for denying parole, but  
 8 whether "some evidence" indicates a parolee's release unreasonably  
 9 endangers public safety.

10 Cal. Code Regs. title 15. section §2402 subd.(a) [parole denied if  
 11 prisoner "will pose an unreasonable risk of danger to society if  
 12 released from prison"] therefor, "some evidence" of the existence of a  
 13 particular factor in the commission of a crime such as "Multiple  
 14 victims", does not necessarily equate to some evidence the parolee's  
 15 release unreasonably endangers public safety. Id.

16 The Superior court in its denial of the petition agreed with the  
 17 board in its denial of parole that the offense involved "Multiple  
 18 victims", Cal Code Regs., title 15., section §2402 subd.(c)-(a) "Multiple  
 19 victims" were attacked, injured, or killed in the same or separate  
 20 incidents.

21 There were multiple victims involved in the commission of the crime  
 22 however the board has in its discretion has recharacterized the offense  
 23 making it to appear to be much more serious or violent than what  
 24 actually took place in the commission of the crime. Petitioner is not  
 25 attempting to minimize the seriousness of this offense of 25 years  
 26 ago, for which society has legitimately punish him. Commissioner Fisher  
 27 stated on record at petitioner's parole hearing held on 9/15/05, "That  
 28 the panel accepts the finding of the court to be true" (See Exhibit (A)  
 "HT" at pg.4, lns.10-14)

1 Furthermore,petitioner with the agreement of the District Attorney's  
2 office of Los Angeles county plead guilty to the offense from the  
3 plea agreement that was offered to an accepted by petitioner by way  
4 of the District Attorney's office for the conviction,for there wasn't  
5 a trial. The facts of the offense would be found in the  
6 (1982),Probation officer's report and the Superior  
7 court(1982),sentencing transcripts an in viewing both of the said  
8 mention transcripts in their entirety the court would see that the  
9 recharacterization of the offense viewed by Commissioner Fisher is  
10 different from the finding of the Superior court and the probation  
11 report.

12 Moreover,[Commissioner Fisher]:"Obviously,there were multiple  
13 victims and the victims were abused during the offense because they  
14 were robbed whether or not a hand was laid on them,that was abusive.  
15 (See Exhibit(A)"HT"at pg.58,Lns.6-15)

16 The (1982),Probation officer's report found that,"The victims were  
17 visibly shaken but physically unhurt", (See Exhibit(B),Probation  
18 report,at pg.7,Lns.18-19);(See also Exhibit(C),(1982),Superior court  
19 sentencing transcripts,at pg.2,Lns.22; pg.3,Lns.9-11),The court found  
20 that,"There was no or little harm inflicted upon them,"These women  
21 were not abused or injured in the commission of this crime as  
22 Commissioner Fisher views this offense.

23 Regulations provides that circumstances tending to establish  
24 suitability for parole are that the prisoner,(1) does not possess a  
25 record of violent crimes committed while a juvenile;(2) has a stable  
26 social history;(3) has shown signs of remorse;(4) committed the crime  
27 as a result of significant stress in his life,especially if the stress  
28 has built over a long period of time;(5) committed the criminal  
offense as a result of battered woman syndrome;(6) has made realistic  
plans for parole or has developed marketable skills that can be put  
to use upon release;(9) has engaged in institutional activities that  
indicates an enhanced ability to function within the law upon



1 Cal.Code Regs., title 15., section §2402subd.(d). "Rosenkrantz, supra, 29  
2 Cal.4th at p.654.

3 Finally, the regulations explains that the foregoing circumstances are  
4 set forth as general guidelines; the importance attached to any  
5 circumstances or combination of circumstances in a particular case is  
6 left to the judgment of the panel." Cal.Code Regs. title 15 section  
7 §2402, subd.(c)-(d), "Rosenkrantz, supra, 29 Cal.4th at p.654.

8 Court review of the board's decision is governed by a deferential "some  
9 evidence" standard designed to ensure minimum procedural due process  
10 protection, "Rosenkrantz, supra, 29 Cal.4th at p.658; In re Scott, supra, 119  
11 Cal.App.4th at p..885-887", [T]he "some evidence" standard is extremely  
12 deferential and reasonably cannot be compared to the standard of review  
13 involved in ... considering whether substantial evidence supports the  
14 findings"(id. at p.665); Nevertheless, it requires "some indicia of  
15 reliability", In re Scott(2005), 334 f.3d 910, 915, and maybe understood  
16 as meaning that suitability determination must have some rational basis  
17 in fact, In re Scott, at p.590 fn.6 .

18 The key question is whether "some evidence" supports the board's  
19 decision. The board's decision discussed that petitioner as a juvenile  
20 was arrested one (1), time for at the age of 16, years of age in (1974)  
21 was involved in a fight and placed on six months probation and  
22 successfully completed probation, the result of the fight i had broke  
23 the guy's jaw whom i had a fight with, and six(6), years later as an  
24 adult was arrested three(3), times from (1980-81), two(2) arrest for  
25 domestic issues with my wife an in both incidents they wer prosecutor's  
26 rejects an one (1) arrest for having a switch blade knife (See Exhibit  
27 (A) "HT" at pg.10, Lns.5-27; pg.11, Lns.1-27; pg.12, Lns.1-8)

28 Most notably, the board commended petitioner for work that he has been  
doing remaining disciplinary free since (1989), 18, yrs. (See Exhibit(A)  
"HT" at pg.24, Lns.6-26; pg.61, Lns.11-14)

1 The decision by the board goes on to comment that petitioner has  
2 strong support from his family and fiancée (See Exhibit(A)"HT" at  
3 pg.60,Lns.14-19),he has received favorable evaluations from  
4 correctional mental health professionals,including a (2003)  
5 Psychological assessment form staff Psychologist Dr.William Garmard  
6 concluding that,"In terms of an assessment of dangerousness,states  
7 that if released to the community,violence potential is estimated to  
8 be no higher than the average citizen in the community,if he were  
9 release from prison" (See Exhibit(A)"HT" at pg.34,Lns.17-27;  
10 pg.35,Lns.1-14). All the above mention information has been discussed  
11 and recognized by the board twelve (12) times,when the board have  
12 commended him for all his favorable accomplishments. However  
13 notwithstanding all the favorable gains that petitioner has made,the  
14 board in looking solely at the facts of the commitment offense,and  
15 made a finding that if petitioner,"Was released from prison on  
16 parole,he would pose an unreasonable public safety risk to society"  
17 and denied parole to petitioner.

18 The case of In re Scott,supra,133 Cal.App.4th 573,summarizes the law in  
19 this situation. The board's assumption that a prisoner may be  
20 unsuitable for release on the basis of the commitment offense alone is  
21 correct [citation],but the proposition must be properly understood,the  
22 commitment offense is one of only two factors indicative of  
23 unsuitability a prisoner cannot change (The other being his previous  
24 record of violence)

25 Reliance on such an immutable factor without regard to or  
26 consideration of subsequent circumstances may be unfair [citation],and  
27 runs contrary to the rehabilitative goals espoused by the prison  
28 system and could result in a due process violation [Citation]

//

1 The commitment offense can negate suitability only if circumstances of  
2 the crime reliably established by evidence in the record rationally  
3 indicate that the offender will present an unreasonable public safety  
4 risk if released from prison. Yet, the predictive value of the  
5 commitment offense may be very questionable after a long period of  
6 time. [citation]. Thus, denial of release based solely on the basis of  
7 the gravity of the commitment offense warrants especially close  
8 scrutiny, "In re Scott, supra, 133 Cal. App. 4th at pp. 594-595, fns. omitted  
9 Chief among the board's reasons for denying parole was the belief of  
10 the panel that the offense was "carried out in a very callous  
11 manner", obviously, there was multiple victims, and the victims were  
12 abused during the offense because they were robbed and then they  
13 forced into a van with apparently four(4) men, [Mr. Tatum], petitioner  
14 being one of them, and Mr. Tatum according to the victims and  
15 corroborated by one of the codefendants, told them to take off their  
16 clothes because he was going to fuck them (See Exhibit(A) "HT" at  
17 pg. 58, Lns. 4-16)

18 In the Superior court decision to deny the petition the court found  
19 other than the board's findings that, "There is some evidence to  
20 support the finding that the offense was carried out in a manner that  
21 demonstrates an exceptionally callous disregard for human  
22 suffering, "means the offense in question must have been committed in a  
23 more aggravated or violent manner than ordinarily shown in the  
24 commission of that offense.

25 To deny parole where no circumstances of the offense reasonably could  
26 be considered more aggravated or violent than the minimum necessary  
27 to sustain a conviction for that offense, violates due process of  
28 law. In re Scott, supra, 133 Cal. App. 4th at p. 598,

//

1 The essence of the board's decision and the Superior court finding  
2 that the offense was callous which demonstrates an exceptionally  
3 disregard for human sufferin,thus making petitioner's release at this  
4 time an unreasonable risk of danger to society. Given the lapse of  
5 twenty-five (25),years of confinement and exemplary evidence of  
6 rehabilitation gains made by petitioner over that time,continued  
7 reliance on these aggravating factors of the crime do not amount to  
8 "some evidence" supporting denial of parole.

9 The commitment offense, The court have observed in an unsuitability  
10 factor that is immutable and whose perdictive value may be very  
11 questionable after a long period of time [citation].In re  
12 Scott,supra,133 Cal.App.4th at pp.594-595,fn.omitted. The Scott,opinion  
13 also noted,as has our Supreme court,strong legal and scientific support  
14 that."predictions" of future dangerousness are exceedingly  
15 unreliable",even where the passage of time is not a factor and the  
16 assessment is made by an expert. Id at p.595 fn.9

17 Reliance on a immutable factor,without regard to or consideration of  
18 subsequent circumstances,my be unfair to run contrary to the  
19 rehabilitation goals espoused by the prison system,and result in a due  
20 process violation Id.at p.595.

21 A parole hearing [also],does not ordinarily provide a prisoner a  
22 very good opportunity to show his offense was not committed in a  
23 especially heinous,atrocious or cruel manner,even if such evidence  
24 exist and the prisoner is willing to run the risk his effort to make  
25 such a showing will be seen as unwillingness to accept responsibility  
26 and therefore evidence of unsuitability. Id. at p..600-601,fn.

27 This may be made worse by the absence of a trail transcripts  
28 (Ibid),That is the case here.



1 The alarming fact of this case is twelve(12) times in denying  
2 petitioner's parole this board has relied solely on the gravity of  
3 the offense something that no rehabilitative progress can ever  
4 change.

5 An instructive case is, Yellen v. Diane Butler (E.D. Cal. 2003, No# CIV  
6 S-01-2398, Where petitioner, Yellen is serving two(2), concurrent terms  
7 of life with the possibility of parole for the conviction of  
8 Kidnap/Robbery, and was found unsuitable for parole at his  
9 third(3rd), parole hearing before the board in (1999), and three more  
10 additional hearings following the (1999) hearing at which he found  
11 unsuitable for parole.

12 The facts of the offense in many an all respects are far more worse  
13 than the instant case, Petitioner, Yellen along with two(2), crime  
14 partners in (1983), from November 5th til November 21st, went on a  
15 crime spree crimes including: conspiring to robb Neiman-Marcus, the  
16 overt acts in the conspiracy were stealing Mr. Silverman's  
17 Porsche, breaking in at Kelco Industries to lure (ADT) security  
18 personnel, Kidnapping and Robbing Mr. Nixon, stealing Mr. Castenada's  
19 Van, posing as interested buyers of and attempting to steal  
20 Mr. Terzibachian's Porsche, Kidnapping to robb Mr. Nixon and  
21 Mr. Castenada, robbing Mr. Castenada and Mr. Nixon, unlawfully taking  
22 both of their Vehicles, attempting grand theft auto of Mr. Terzibachian  
23 Car, assault with fire-arms on Micheal and Rebecca Terzibachian and  
24 Joseph Deuer, assaulting Neiman-Marcus employees, burglarizing  
25 Neiman-Marcus.

26 Petitioner, Yellen was convicted and sentenced to prison for  
27 concurrent life terms with the possibility of parole for  
28 Kidnap/Robbery, the board continued to rely on the facts of the crime  
to deny parole.

1 The board concluded that Yellen's crime was trivial in relation to the  
2 offense, and the involved multiple victims.

3 The Eastern District court (2003), in Yellen wrote, more important in  
4 assessing any due process violation is the fact that continuous  
5 reliance on unchanging circumstances transforms an offense for which  
6 California law provides eligibility for parole into a de facto Life  
7 imprisonment without the possibility of parole, the court ask  
8 rhetorically petitioner, Yellen's crime or motivation for the crime  
9 which are going to change, the answer is nothing. The circumstances of  
10 the crime will always be what they were, and petitioner's motive for  
11 committing them will always be trivial petitioner has no hope of ever  
12 obtaining parole except that a panel in the future will arbitrarily  
13 hold that the circumstances were not that serious or the motive was  
14 more than trivial.

15 Given that no one seriously contends lack of seriousness or lack of  
16 triviality at the present time the potential for parole in this case is  
17 remote to the point of non-existence, petitioner's liberty interest  
18 should not be determined by such an arbitrary remote possibility.

19 Further, the court found that there was not sufficient evidence to  
20 support the (1999) board's decision finding petitioner, Yellen  
21 unsuitable for parole.

22 Petitioner in the instant case is experiencing the same results as did  
23 petitioner, Yellen continuous denial of parole an unlike  
24 petitioner, Yellen being denied parole for six (6) times, petitioner in  
25 the instant case have been denied parole by the board  
26 twelve (12) times, the board relying on immutable factors to deny parole  
27 violation of due process of law.

28 ///

1 The court in Irons, supra, 358 f.Supp.2d at p.947 fn.3 ;express that, "To  
2 a point it is true,"the circumstances of the crime and the  
3 motivation for it may indicate a petitioner's  
4 instability, cruelty, impulsiveness, violent tendencies and the like.  
5 Howeve, after fifteen(15), or so years in the caldron of prison life, not  
6 exactly an ideal therapeutic environment to say the least, and after  
7 repeated demonstrations that despite the recognized hardship of  
8 prison, this petitioner does not posses those attribute, the predictive  
9 ability of the circumstances of the crime is near zero.

10 The rehabilitation success of petitioner is without a doubt a major  
11 factor in this case. The board's decision denying parole on the basis  
12 of the facts of the offense lacks "some evidence" that granting parole  
13 posed an unreasonable risk of danger to society, (Cal.Code Regs., title  
14 15. section §2402, subd.(a)). The petition filed in this case should be  
15 granted and the board ordered to reverse its decision of the (2005)  
16 parole hearing from unsuitable to suitable, and grant petitioner a  
17 release date.

18 ///

19 There was no evidence before the Board showing that Petitioner had a  
20 unstable social history another reason to deny parole.

21 The board opined that petitioner, "Has an unstable social history  
22 related to the fact that between the ages of 13, to 15, years. of age  
23 petitioner was a gang member, smoked marijuana an also was involved in  
24 using other drugs and alcohol (See Exhibit(A) "HT" at pg.59, Lns.8-14)

25 Petitioner contend, that back in October(1982) when convicted of this  
26 offense an entering into the Department of Corrections in my initial  
27 interview, i was ask a number of questions such as: "Did i belong to a  
28 gand, "Did i drink alcohol, "Have i ever used drugs", and from my memory i  
answered yes to all of the questions.

1 The record reflect that there is no evidence showing that when  
2 petitioner had drunk alcohol from time to time and used drugs an  
3 associated with a gang, for my involvement with these elements wasn't  
4 to the degree that petitioner's daily life evolved around these  
5 negative activities for if it was a reality of some 30, years ago of  
6 extensive drug an alcohol use and gang activity, for that involvement  
7 to that degree would constitute an unstable social history an it  
8 would be well documented within the record of such involvement such  
9 as arrest and convictions relating to these issues, however the record  
10 is devoid of evidence showing that petitioner had an unstable social  
11 history, prior to the commitment offense, petitioner was married and  
12 worked as a welder and fork-lift driver, and provided for my family  
13 and lived a stable social life.

14 Moreover, petitioner submits that his past does not by itself  
15 reasonably establish current unsuitability because there is no  
16 additional evidence to complete a chain of reasoning between his past  
17 and in finding that because of it he currently poses an unreasonable  
18 risk of danger if released.

19 The fact that petitioner was forthright an admitted to drinking an  
20 using drugs along with gang association at the ages of 13-16, years of  
21 age some 30, plus years ago does not by itself represent some evidence  
22 that he is currently a risk and danger if release from prison.

23 Thus, as this court of Appeal recently concluded in the matter of In  
24 re Scott, 2006, DJDAR 13961 at p.13963, "The test is not whether some  
25 evidence supports the reasons the board cites for denying parole, but  
26 whether some evidence indicates a parolee's release unreasonably  
27 endangers public safety. Cal.Code Regs., title 15. section  
28 §2402, subd. (a), [Parole denied of prisoner will pose an unreasonable  
risk of danger to society if released from prison]



1 Therefore, "some evidence" of the existence of a particular factor  
2 does not necessarily equate to some evidence the parolee's release  
3 unreasonably endangers public safety. Id.

4 Thus, the court must view the parole board's reason for denial of  
5 petitioner's parole within the context of the other factors it must  
6 consider to see if some evidence shows he continue to pose a current  
7 unreasonable risk to public safety. In re Scott, supra, 133 Cal.App.4th  
8 at pp.594-595. Applying that test, petitioner asserts the court will  
9 find no evidence that he is likely to commit another crime or that his  
10 release would unreasonably endanger the public.

11 Furthermore, although at the board hearing the record will reveal  
12 petitioner's involvement and participating in self-help substance  
13 abuse programs continuously since (1989) within the institution.

14 (See Exhibit(A) "HT" at pg.26, Lns.4-27; pg.27, Lns.1-10)

15 In sum, the factor cited by the board that petitioner has an unstable  
16 social history because of the use of alcohol and drug along with  
17 association with a gang does not constitute some evidence that  
18 petitioner, he currently poses an unreasonably risk of danger.  
19 indeed, if petitioner's past involvement with the use of drugs and  
20 alcohol and gang association invariably establish his  
21 unsuitability, then the parole board could deny parole for the rest of  
22 petitioner's life based on this immutable factor. The board's  
23 decision in this regard appears to be arbitrary and capricious because  
24 as noted, the decision omits any consideration of, or even reference  
25 to, the undisputed evidence noted above.

26 ///

27 ///

28 ///

1 The Board's Decision Denying Parole Failed To Reflect Due  
2 Consideration Of The Circumstances Tending To Show His Suitability  
3 For Parole.

4 The board failed to consider evidence showing petitioner's is  
5 suitable for release from prison. The evidence shows the existence  
6 in this case of all the foregoing circumstances tending to show  
7 suitability for release from prison, except the "Battered woman  
8 syndrome, Cal. Code of Regs. section §2402, subd. (d), (1), (9).

9 The board commended petitioner for some of the circumstances tending  
10 to show suitability for parole; has completed high school, has  
11 vocations, and marketable skills, participated in self-help  
12 programing, has favorable psychiatric reports, and has realistic plans  
13 for parole an ample letters of support from family and friends  
14 supporting his release an at Fifty(50), years of age reduces the  
15 probability of recidivism (See Exhibit(A)"HT" at pg.59, Lns.21-24;  
16 pg.60, Lns.6-19)

17 The board's failure to undertake the individulized consideration of  
18 all relevant factors required by Rosenkrantz, 29 Cal.4th at  
19 p.655, "also offends the board's own regulations, which require that  
20 [A]ll relevant, reliable, information available to the panel shall be  
21 considered in determining suitability for parole, Cal. Code of  
22 Regulations., title 15. section §2402, subd. (b); In re Ramirez, 94  
23 Cal.App.4th 549, at 571-72.

24 [F]ailure to acknowledge that Ramirez's conduct in prison was a  
25 circumstance that supported his application for parole, is yet another  
26 indication of an arbitrary and capricious determination.

27 The board's treatment of petitioner is if anything more unfair than  
28 that considered in Ramirez, because more evidence of circumstances  
tending to show suitability for release was ignored here than in that  
case.

//

1 Furthermore, the evidence of petitioner's participation and  
2 performance while incarcerated is particularly significant. As the  
3 Supreme court has recognized, the behavior of an inmate during  
4 confinement is critical in the sense that it reflects the degree to  
5 which the inmate is prepared to adjust to parole release  
6 Greenholtz, 442 U.S. at p.15, 99 S.ct.2100.

7 Conclusion

8 For all the reasons expressed herein, this court should grant the  
9 petition for habeas corpus.

10 *///*

11 *///*

12 *///*

13 *///*

14 *///*

15 *///*

16 *///*

17 *///*

18 *///*

19 *///*

20 *///*

21 *///*

22 *///*

23 *///*

24 *///*

25 *///*

26 *///*

27 *///*

28 *///*

## 6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

See Attached

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

See Attached

## b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

1 Petitioner Was Removed From His Parole Hearing And Deprived Of The  
2 Right To Ask Questions And To Speak Regarding An Unsupported  
3 Claim,For There Was No Evidence That Petitioner Was Not  
4 Cooperating,Being Combative,and Argumentative And Needed To Be Remove  
5 From His Parole Hearing.

6 On September 15th,2005,Petitioner went before the Board for  
7 petitioner's twelfth(12th),parole consideration hearing. The hearing  
8 was conducted by Commissioner,Susan Fisher,Deputy Commissioner  
9 D.H.Mcbean,Deputy District Attorney for the county of Los Angeles  
10 Alexis Delagarza,Katera Rutledg Attorney for petitioner,and  
11 Petitioner Willie E. Tatum Jr. were all present.

12 The Following Colloquy Is What Led To Petitioner's Removal From The  
13 Hearing.

14 [District Attorney Delagraza]:"I think the last hearing or the  
15 hearing before last,they suggested that petitioner do programing with  
16 the respect to the fact that the victims of the crime were women and  
17 the concern was that he had sexual aggression issues didhe ever do  
18 any self-help or any kind of anything on that"]

19 [Petitioner]:"Excuse me,you said that you read that in some  
20 transcripts of last years hearing"] .

21 [Commissioner Fisher]:"Wait until the board ask the questions"]

22 [Deputy Commissioner Mcbean]:"Hold on is it in the transcripts of the  
23 hearing or was it in the transcripts of the decision"]

24 [District Attorney Delagraza]:"In the report i read that where it  
25 indicated what the inmate was told to do,I'm trying to find where it  
26 was"]

27 [Petitioner]:"And back to the representative,The District  
28 Attorney,"She said that she read is somewhere i mean,what document is  
this"]



1 [Commissioner Fisher]: "Just clam down we're not going to just leave  
2 it on record unsolved"]

3 [Deputy Commissioner Mcbean]: "Well it is a good question though, even  
4 if it hasn't been posed in the past, and i know you're not interested  
5 in talking about the crime today"]

6 [Petitioner]: "Right"]

7 [Deputy Commissinoer Mcbean]: "I do notice that in terms of self-help,  
8 the only thing you've done is A.A., and there was the sexual component  
9 of the crime, have you tried to do anything at all in terms of  
10 self-help on any sexual issues"]

11 [Petitioner]: "No because, i what was the conviction?, what is the  
12 conviction?"]

13 [Deputy Commissioner Mcbean]: "Concerning the facts on the crime"]

14 [Petitioner]: "Okay, but what about the conviction?"]

15 [Deputy Commissioner Mcbean]: "I'm asking the question"]

16 [Petitioner]: "What was the conviction, I wasn't convicted of no sexual  
17 crime"]

18 [Commissioner Fisher]: "Mr. Tatum let me give you some advice you're  
19 doing the same thing right now that you have been doing in other  
20 hearings, that have been getting you into trouble, if we're trying to  
21 go"]

22 [Petitioner]: "Get to what-what are you trying to get to  
23 Ms. Commissioner"]

24 [Commissioner Fisher]: "All right get him out of here please"]

25 [Petitioner]: "Can i have my chrono's, give me my chrono's"]

26 [Commissioner Fisher]: "I'll give them to you later, I'll give it to  
27 your Attorney at the end of your hearing, just for the record, I'm  
28 having the officer remove Mr. Tatum from the room, he is not  
cooperating, hes being combative, and hes argumentative, an we don't  
need to have him here"]

1 (See Exhibit(A)"HT",Starting at pg.40,Lns.20-27; On through to  
2 pg.44,Lns.1-16)

3 California Penal Code section §3041.5, and California Code of  
4 Regulations section §2247, affords petitioner the right during a  
5 parole hearing to ask and answer questions and to speak on my own  
6 behalf, and as petitioner exercised these rights to ask questions and  
7 to speak on my own behalf regarding the unsupported claim made by  
8 District Attorney Delagrazia, petitioner was told to wait by  
9 Commissioner Fisher, "Until the board ask the questions, violating  
10 procedural rights of petitioner. (See Exhibit(A)"HT" at  
11 pg.41, Lns.4-9)

12 [Commissioner Fisher]: "Just clam down we're not going to just leave  
13 it on record unsolved"; (See Exhibit(A)"HT" at pg.42, Lns.20-25)

14 The unsupported claim made by District Attorney Delagrazia did in fact  
15 remained on record unsolved, for she did not and could produce the  
16 supporting documentation, [The "Report" as evidence at the hearing to  
17 support her unsupported stated claim regarding this sexual aggression  
18 issue that was fabricated by her.

19 Cal. Code of Regs. title 15, section §2030, (d), (2); hearing procedures;  
20 Role of the Prosecutor, in pertinent part:

21 "In making comments, supporting documentation in the file should be  
22 cited", for District Attorney Delagrazia stated that she had read a  
23 prior board report stating that a prior board suggested that  
24 petitioner do some programing relating to sexual aggression issues, for  
25 she made the unsupported claim but did not and could not produce the  
26 documentation at the hearing to support her claim that went unsolved  
27 and as result petitioner was removed from his parole hearing  
28 after questioning the validity of the District Attorney's statement.

(See Exhibit(A)"HT" at pg.40, Lns.20-27; pg.41, Lns.1-17; pg.48, Lns.8-22)

1 Further, for no such "Reports" even exist for the board don't issue  
2 any reports for any recommendations or suggested programing that the  
3 board may recommend, it would be found in the decision section of a  
4 board transcripts after parole is denied, for an example of this  
5 procedure (See Exhibit(A) "HT" at Decision pg. 61, Lns. 2-5)

6 Moreover, at the outset of the parole hearing petitioner invoke the  
7 right not to discuss the offense (See Exhibit(A) "HT" at pg. 4, Lns. 2-15;  
8 pg. 7, Lns. 5-11); See also California Penal Code section §5011(b), and  
9 Cal. Code of Regulations section §2236)

10 The question stated into the record by District Attorney Delagrazia  
11 and supported by the board panel which led to petitioner being  
12 removed from his parole hearing, was a question involving  
13 circumstances surrounding the offense in which petitioner was not  
14 convicted of however these circumstances still remain as elements of  
15 the crime and petitioner chose not to discuss the offense, the  
16 conviction in (1982) was for Kidnap/Robbery, not Kidnap/Rape; (See  
17 Exhibit(A) "HT" at pg. 40, Lns. 20-27; pg. 47, Lns. 1-19)

18 Overmore, Commissioner Fisher was the hearing officer in charge of  
19 petitioner's parole hearing, Cal. Code of Regulation, title 15, section  
20 §2030(d), (1), hearing procedures in pertinent part:

21 The hearing officer shall ensure throughout the hearing that  
22 unnecessary, irrelevant or cumulative oral testimony and statements are  
23 excluded", and for the allowance by Commissioner Fisher of the  
24 unsupported stated claim and questions ask by District Attorney  
25 Delagrazia, and Deputy Commissioner Mcbean, for these questions and  
26 statements were unnecessary, irrelevant and was found to be unsupported  
27 by the record leading to petitioner being removed from his  
28 hearing, violation of due process of law.



Conclusion

That, this court grant this petition, for all the reasons expressed herein.

//

Respectfully,  
Submitted, Petitioner  
Willie E. Totum Jr.  
July 9, 2007

# **EXHIBIT 4**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COURT OF APPEAL - SECOND DIST.

**FILED**

SEP 26 2007

JOSEPH A. LANE

Clerk

S. VEVERKA

Deputy Clerk

In re

) B200514

WILLIE EARN TATUM, JR.,

) (Super.Ct.No. BH004120)

) (Steven R. Van Sicklen, Judge)

on Habeas Corpus.

)

)

)

)

)

)

ORDER

DOCKETED  
LOS ANGELES

SEP 26 2007

BY SUE APOLINAR

NO. \_\_\_\_\_

THE COURT:\*

The petition for writ of habeas corpus has been read and considered.

The petition is denied. Denial of parole may be based solely or in part upon the particular circumstances of the inmate's commitment offense. The record shows that the particular circumstances of petitioner's kidnapping-for-purpose-of-robbery offense "exceed the minimum elements necessary to sustain a conviction" of that offense in numerous respects. (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1070-1071, 1094-1095.) The record also amply satisfies the applicable "some evidence" standard with regard to the other factors identified by the Board in determining petitioner unsuitable for parole in 2005.

\* EPSTEIN, P. J.,

WILLHITE, J.,

MANELLA, J.

# **EXHIBIT 5**

**S157114**

SUPREME COURT  
**FILED**

OCT 10 2007

Frederick K. Onirich Clerk

Deputy

PETITION FOR REVIEW

In re WILLIE TATUM

On Habeas Corpus

C/A #B200514  
S.C. #A528706  
BH004120

---

Willie Tatum  
C-55580  
P. O. Box 689  
Soledad, CA 93960-0689

Willie Tatum  
C-55580  
P.O.Box 689  
Soledad, Ca. 93960-0689  
Pro Se

RECEIVED  
OCT 10 2007  
CLERK SUPREME COURT

California Supreme Court

Willie Tatum,  
Petitioner

No.

V.

Ben Curry, Warden, et al.

Respondant

Petition for Review

of of Appeal's

Denial Case No. B200514

Filed September 26, 2007

Petition for Review

Petitioner, Willie Tatum, ask this court to review the denial of the California Court of Appeal, Second Appellate District, denying his application for writ of habeas corpus against the Board of Parole Hearing, denying his application to be release on parole.

Necessity for Review

The board of parole hearing denied petitioner parole, concluding that petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety if released from prison, yet in the board's decision to deny parole the board failed to show or prove that petitioner is a current threat and danger to society if release from prison.

The board also relied on additional factors in denying parole, the evidence the board relied on was that, petitioner has a history of unstable tumultuous relationship with others Cal. Code Regs., tit. 15 §2402, subd. (c), (3), two domestic violence issues with petitioner former wife, and the record before the board at petitioner's parole hearing shows that both of these incidents were DA's rejects, yet the board continues to use these incidents as added weight to continue to deny parole to petitioner.

Petitioner was removed from his parole hearing held on September 15, 2005, the board concluded petitioner became uncooperative and combative during the hearing, and needed to be removed from the hearing, denying petitioner his right's to ask an answer questions, and to speak on his own behalf.

Review is necessary to guide the board as to how to apply and follow California's Law regarding parole board hearings.

Petitioner submits this application for review, declaring the record (established) at his twelfth (12th), parole consideration hearing held on September 15th, 2005, holds **NO** evidence that petitioner **currently** poses a risk to public safety with which to support the board's denial of parole to petitioner.

---

Name Willie Earn Tatum Jr.  
 Address P.O.Box 689, ED-90/Low  
Soledad, California  
93960-0689  
 CDC or ID Number C-55580

California Court of Appeals  
Second Appellate District  
 (Court)

PETITION FOR WRIT OF HABEAS CORPUS

Willie Earn Tatum Jr.	
Petitioner	
vs.	
Ben Curry, Warden	
Respondent	

No. \_\_\_\_\_  
 (To be supplied by the Clerk of the Court)

INSTRUCTIONS — READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.



12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: Superior Court, Los Angeles County

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas Corpus

(3) Issues raised: (a) Due Process violation

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): Denied See attached Exhibit (D)

(5) Date of decision: April 10th, 2007 Case No# BH004120

b. (1) Name of court: \_\_\_\_\_

(2) Nature of proceeding: \_\_\_\_\_

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

N/A

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:  
See Attached Superior Court denial Case No# BH004120

SEE Exhibit (D)

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

June 29, 2006

Willie E. Totum Jr.  
(SIGNATURE OF PETITIONER)

1 This case arises out of the repeated denials of Parole to  
2 Petitioner, Willie E. Tatum Jr., a State prisoner who is a first term  
3 with one arrest as a juvenile and three arrest as an adult. He also  
4 plead guilty to two(2), counts of Kidnap/Robbery ran concurrent and  
5 was sentenced to life with the possibility of Parole. Throughout his  
6 confinement his prison programing and performance has contributed to  
7 him becoming an excellent candidate for Parole.

8 Throughout his incarceration he has participated in programs to  
9 help better himself such helpful programs such as: Anger  
10 Management, "AA", Life Skills, have received favorable and supportive  
11 Psychological evaluations from staff Psychologist over the years and  
12 have establish an excellent work record documented as exceptional an  
13 above average ratings. In short, during his Twenty five(25), years in  
14 prison and for the past eighteen(18), years being disciplinary free  
15 along with positive programing, for all the above stated  
16 accomplishment these factors are not truly considered within  
17 Petitioner's Parole hearing.

18 Furthermore, the evidence of petitioner's performance while  
19 incarcerated is particularly significant. As the Supreme Court has  
20 recognized, "The behavior of an inmate during confinement is critical  
21 in the sense that it reflects the degree to which the inmate is  
22 prepared to adjust to Parole release" Greenholtz, 442 U.S. at  
23 Pg.15, 99, S.ct.2100.

24 Petitioner has appeared before the Parole Board on twelve(12),  
25 occasions, each time being denied Parole solely on the commitment  
26 offense. These denials are percisely what the Supreme Court was  
27 talking about in Greenholtz v. Nebraska, 442 U.S. at pp.7-8

28 //

1 As the court in Greenholtz, said that, "To insure that a  
2 state-created Parole scheme serve the public interest purpose of  
3 rehabilitation and deterrence, the Parole Board must be cognizant not  
4 only of the factors required by state statute to be considered, but  
5 also the concept embodied in the constitution requiring due process  
6 of law. See also, Biggs v. Terhune, 334 F.3d 910, at 916 (9th  
7 Cir. 2003).

8 These factors underscore why the court in In re Scott(2), 133 Cal.  
9 App.4th 573, at pg. 595, took pains to reiterate that "The commitment  
10 offense can negate suitability[for parole], only if circumstances of  
11 the crime... rationally indicate that the offender will present an  
12 unreasonable public safety risk if release from prison. "Thus, as this  
13 court of Appeal recently concluded in the matter of In re Lee, 2006  
14 DJDAR 13961 at pg. 13963, the test is not whether "Some evidence"  
15 supports the reasons the Parole Board cites for denying parole, but  
16 whether "Some evidence" indicates a Parole release unreasonably  
17 endangers public safety. (Cal. Code Regs., title 15, §2402  
18 subd.(a), [Parole denied if prisoner "will pose an unreasonable risk  
19 of danger to society if released from prison."] Therefore, "Some  
20 evidence" of the existence of a particular factor does not  
21 necessarily equate to some evidence the parolee's release  
22 unreasonably endangers public safety. Id.

23 Thus, The court must view the Parole Board's reasons for denial of  
24 petitioner's Parole within the context of the other factors it must  
25 consider to see if some evidence shows he continues to pose an  
26 unreasonable risk to public safety. In re Scott, supra, 133 Cal. App.4th  
27 at pg. 594-595, applying that test petitioner's asserts the court will  
28 find no evidence that he is likely to commit another crime or that  
his release would unreasonably endanger the public.

1 Petitioner is not attempting to minimize the seriousness of his  
2 offense of 25 years ago, for which society has legitimately punish  
3 him, however, no reasonable possibility exists that petitioner will  
4 reoffend other than the instant case petitioner's criminal history is  
5 minimal to say the least, for there in NO prior convictions one arrest  
6 as a juvenile and three arrest as an adult, (See Exhibit (A)  
7 2005 Board Hearing transcripts (hereinafter "HT"), at pg. 10, Lns. 6-27;  
8 pg. 11, Lns. 1-27; pg. 12, Lns. 1-6)

9 Petitioner is now a middle age man of 50 years of age and who has  
10 accomplish much during his incarceration, for he has acquired an  
11 education and vocations, has taken numerous life skills classes  
12 providing him with the ability to cope with stress and anger, none of  
13 which he possessed at the age of 25 years of age when he committed  
14 the offense.

15 The primary reason the Parole Board cites for its denial of parole  
16 is, "The nature of petitioner's crime" unchanging factors  
17 ~~therefore, the board's decision is not supported by some evidence.~~

18 Petitioner contends the Superior court erred, when it summarily denied  
19 the petition and failed to identify what evidence contained in the  
20 record supported the board's finding of unsuitability. Petitioner, is  
21 unclear as to whether the court found that "Some evidence" in the  
22 record supported the reasons the board cites for denying parole, or  
23 whether "some evidence" indicates his release unreasonably endangers  
24 public safety.; In re Scott, 2006 DJDAR 13961 at p. 13963; (See  
25 Exhibit (D), The decision from the Superior court denying the petition  
26 on April 10th, 2007)

27 As this court of Appeal found in Lee, "some evidence" of the existence  
28 of a particular factor does not necessarily equate to some evidence  
the parolee's release unreasonably endangers public safety. Id. at  
p. 13963.

Furthermore, this court concluded, "The test is not whether some evidence supports reasons the the [Board] cites for denying parole, but whether some evidence indicates a parole release unreasonably endangers public safety. (Cal. Code Regs., title 15, §2402 subd.(a), "Parole denied if prisoner will pose unreasonable risk of danger to society if release from prison."); See, e.g., *In re Scott*, (2005), 133 Cal. App.4th 573, 595 [The commitment offense can negate suitability for parole only if circumstances of the crime... rationally indicate that the offender will present an unreasonable safety risk if releases from prison.]"

Moreover, in accordance with the court of Appeal decision in *In re Lee*, the Superior court's denial of the petition failed to reveal the Board's reason's of unsuitability within the context of the other factors it must consider to see if some evidence shows petitioner continues to pose a current an unreasonable risk to public safety. (2006) DJDAR at pp.13963; See *In re Scott*, supra, 133 Cal.App.4th at pp.594-595. For the above stated reasons the petition should be

return to the Superior court for review consistent with this court of Appeal's view's in *In re Scott*, (2006), DJDAR !#(c!.

**"The Board of Parole Hearings Decision Denying Parole Did Not Comport with Due Process"**

On September 15th, 2005, Petitioner's twelfth(12th), Parole consideration hearing was held. The Board of Parole Hearings (Board), again denied parole for a period of two(2), years. In the Board's decision to deny Parole the Board concluded that, "Petitioner continued to pose an unreasonable risk of danger to society or a threat to public safety if released from prison", The Board relied primarily on the commitment offense the Board found that the offense "Was a very serious crime", "The offense was carried out in a very

callous manner", "There were mutiple victims"  
See exhibit (A) 2005 Board's decision transcripts "HT" at pg.57, Lns.12-26; pg.58, Lns.4-6



Parole suitability decisions for inmate serving indeterminate life terms are made, in the first instance by the Board. In re Scott, (2004), 119 Cal. App.4th 871, 884-885. The Board has broad discretion and must normally set Parole release in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to public safety (ibid; Penal Code section, §3041, subd.(a), and must set a Parole date unless it determines that the gravity of the current or past convicted offense or offenses are such that public safety requires a more lengthier period of incarceration. In re Scott, supra at pp.885; Penal Code section §3041 subd.(b). That decision is guided in turn by regulations directing the Board's consideration to six (6), nonexclusive circumstances tending to show unsuitability, California Code of Regulations, title 15., section §2402, subd.(c), and nine (9), tending to show suitability id., section §2402, subd.(d), In re Scott, supra at pp.897.

According to the applicable regulations circumstances tending to establish unsuitability for Parole are that the prisoner; (1), committed the offense in an especially heinous, atrocious, or cruel manner; (2), possesses a previous record of violence; (3), has an unstable social history; (4), previously has sexually assaulted another individual in a sadistic manner; (5), has a lengthy history of severe mental problems related to the offense; (6), has engaged in serious misconduct while in prison. (Cal. Code Regs., title 15., section §2402, subd.(c), In re Rosenkrantz, (200), 29 Cal.4th 616, 653-64 fn. omitted.

Circumstance (1), is supported where (a) multiple victims were attacked, injured, or killed in the same or separate incidents; (b), The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder; (c), The victims was abused, defiled, or mutilated during or after the offense; (d) the offense was committed in a particularly heinous, atrocious, or cruel manner.

1 in a manner that demonstrates an exceptionally callous disregard for  
 2 human suffering;and(e),The motive for the crime is inexplicable or  
 3 very trivial in relation to the offense, Cal. Code Regs.,title  
 4 15.section §2402,subd.(c),(1)",Rosenkrantz,at pp.653,fn.11.

5 Overmore, The court of appeal recently concluded in the matter of In  
 6 re Lee, (2006), DJDAR 13961 at p.13963, the test is whether "some  
 7 evidence" supports the reasons the board cites for denying parole, but  
 8 whether "some evidence" indicates a parolee's release unreasonably  
 9 endangers public safety.

10 Cal. Code Regs. title 15. section §2402 subd.(a) [parole denied if  
 11 prisoner "will pose an unreasonable risk of danger to society if  
 12 released from prison"] therefor, "some evidence" of the existence of a  
 13 particular factor in the commission of a crime such as "Multiple  
 14 victims", dose not necessarily equate to some evidence the parolee's  
 15 release unreasonably endangers public safety. Id.

16 The Superior court in its denial of the petition agreed with the  
 17 ~~board in its denial of parole that the offense involved~~ "Multiple  
 18 victims", Cal Code Regs., title 15., section §2402 subd.(c)-(a) "Multiple  
 19 victims" were attacked, injured, or killed in the same or separate  
 20 incidents.

21 There were multiple victims involved in the commission of the crime  
 22 however the board has in its discretion has recharacterized the offense  
 23 making it to appear to be much more serious or violent than what  
 24 actually took place in the commission of the crime. Petitioner is not  
 25 attempting to minimize the seriousness of this offense of 25 years  
 26 ago, for which society has legitimately punish him. Commissioner Fisher  
 27 stated on record at petitioner's parole hearing held on 9/15/05, "That  
 28 the panel accepts the finding of the court to be true" (See Exhibit (A)  
 "HT" at pg.4, Lns.10-14).

1 Furthermore,petitioner with the agreement of the District Attorney's  
2 office of Los Angeles county plead guilty to the offense from the  
3 plea agreement that was offered to an accepted by petitioner by way  
4 of the District Attorney's office for the conviction,for there wasn't  
5 a trial. The facts of the offense would be found in the  
6 (1982),Probation officer's report and the Superior  
7 court(1982),sentencing transcripts an in viewing both of the said  
8 mention transcripts in their entirety the court would see that the  
9 recharacterization of the offense viewed by Commissioner Fisher is  
10 different from the finding of the Superior court and the probation  
11 report.

12 Moreover,[Commissioner Fisher]:"Obviously,there were multiple  
13 victims and the victims were abused during the offense because they  
14 were robbed whether or not a hand was laid on them,that was abusive.  
15 (See Exhibit(A)"HT"at pg.58,Lns.6-15)

16 The (1982),Probation officer's report found that,"The victims were  
17 visibly shaken but physically unhurt",(See Exhibit(B),Probation  
18 report,at pg.7,Lns.18-19);(See also Exhibit(C),(1982),Superior court  
19 sentencing transcripts,at pg.2,Lns.22; pg.3,Lns.9-11),The court found  
20 that,"There was no or little harm inflicted upon them,"These women  
21 were not abused or injured in the commission of this crime as  
22 Commissioner Fisher views this offense.

23 Regulations provides that circumstances tending to establish  
24 suitability for parole are that the prisoner,(1) does not possess a  
25 record of violent crimes committed while a juvenile;(2) has a stable  
26 social history;(3) has shown signs of remorse;(4) committed the crime  
27 as a result of signifcant stress in his life,especially if the stress  
28 has built over a long period of time;(5) committed the criminal  
offense as a result of battered woman syndrome;(6) has made realistic  
plans for parole or has developed marketable skills that can be put  
to use upon release;(9) has engaged in institutional activities that  
indicates an enhanced ability to function within the law upon



1 Cal.Code Regs.,title 15.,section §2402subd.(d)."Rosenkrantz,supra,29  
2 Cal.4th at p.654.

3 Finally,the regulations explains that the foregoing circumstances are  
4 set forth as general guidelines; the importance attached to any  
5 circumstances or combination of circumstances in a particular case is  
6 left to the judgment of the panel."Cal.Code Regs.title 15 section  
7 §2402,subd,(c)-(d),"Rosenkrantz,supra,29 Cal.4th at p.654.

8 Court review of the board's decision is governed by a deferential "some  
9 evidence" standard designed to ensure minimum procedural due process  
10 protection,"Rosenkrantz,supra,29 Cal.4th at p.658;In re Scott,supra,119  
11 Cal.App.4th at p..885-887",[T]he "some evidence" standard is extremely  
12 deferential and reasonably cannot be compared to the standard of review  
13 involved in ... considering whether substantial evidence supports the  
14 findings"(id. at p.665);Nevertheless,it requires "some indicia of  
15 reliability",In re Scott(2005),334 f.3d 910,915,and maybe understood  
16 as meaning that suitability determination must have some rational basis  
17 in fact,In re Scott,at p.590 fn.6.

18 The key question is whether "some evidence" supports the board's  
19 decision. The board's decision discussed that petitioner as a juvenile  
20 was arrested one (1),time for at the age of 16,years of age in (1974)  
21 was involved in a fight and placed on six months probation and  
22 successfully completed probation,the result of the fight i had broke  
23 the guy's jaw whom i had a fight with,and six(6),years later as an  
24 adult was arrested three(3),times from (1980-81),two(2)arrest for  
25 domestic issues with my wife an in both incidents they wer prosecutor's  
26 rejects an one (1) arrest for having a switch blade knife (See Exhibit  
27 (A) "HT" at pg.10,Lns.5-27; pg.11,Lns.1-27; pg.12,Lns.1-8)

28 Most notably,the board commended petitioner for work that he has been  
doing remaining disciplinary free since (1989),18,yrs.(See Exhibit(A)  
"HT"at pg.24,Lns,6-26; pg.61,Lns.11-14)

1 The decision by the board goes on to comment that petitioner has  
2 strong support from his family and fiancée (See Exhibit(A)"HT" at  
3 pg.60,Lns.14-19),he has received favorable evaluations from  
4 correctional mental health professionals,including a (2003)  
5 Psychological assessment form staff Psychologist Dr.William Garmard  
6 concluding that,"In terms of an assessment of dangerousness,states  
7 that if released to the community,violence potential is estimated to  
8 be no higher than the average citizen in the community,if he were  
9 release from prison" (See Exhibit(A)"HT" at pg.34,Lns.17-27;  
10 pg.35,Lns.1-14). All the above mention information has been discussed  
11 and recognized by the board twelve (12) times,when the board have  
12 commended him for all his favorable accomplishments. However  
13 notwithstanding all the favorable gains that petitioner has made,the  
14 board in looking solely at the facts of the commitment offense,and  
15 made a finding that if petitioner,"Was released from prison on  
16 parole,he would pose an unreasonable public safety risk to society"  
17 and denied parole to petitioner.

18 The case of In re Scott,supra,133 Cal.App.4th 573,summarizes the law in  
19 this situation, The board's assumption that a prisoner may be  
20 unsuitable for release on the basis of the commitment offense alone is  
21 correct [citation],but the proposition must be properly understood,the  
22 commitment offense is one of only two factors indicative of  
23 unsuitability a prisoner cannot change (The other being his previous  
24 record of violence)  
25 Reliance on such an immutable factor without regard to or  
26 consideration of subsequent circumstances may be unfair [citation],and  
27 runs contrary to the rehabilitative goals espoused by the prison  
28 system and could result in a due process violation [Citation]

//

1 The commitment offense can negate suitability only if circumstances of  
2 the crime reliably established by evidence in the record rationally  
3 indicate that the offender will present an unreasonable public safety  
4 risk if released from prison. Yet, the predictive value of the  
5 commitment offense may be very questionable after a long period of  
6 time. [citation]. Thus, denial of release based solely on the basis of  
7 the gravity of the commitment offense warrants especially close  
8 scrutiny, "In re Scott, supra, 133 Cal.App.4th at pp.594-595, fns. omitted  
9 Chief among the board's reasons for denying parole was the belief of  
10 the panel that the offense was "carried out in a very callous  
11 manner", obviously, there was multiple victims, and the victims were  
12 abused during the offense because they were robbed and then they  
13 forced into a van with apparently four(4) men, [Mr. Tatum], petitioner  
14 being one of them, and Mr. Tatum according to the victims and  
15 corroborated by one of the codefendants, told them to take off their  
16 clothes because he was going to fuck them (See Exhibit(A) "HT" at  
17 pg. 58, lns. 4-16)

18 In the Superior court decision to deny the petition the court found  
19 other than the board's findings that, "There is some evidence to  
20 support the finding that the offense was carried out in a manner that  
21 demonstrates an exceptionally callous disregard for human  
22 suffering," means the offense in question must have been committed in a  
23 more aggravated or violent manner than ordinarily shown in the  
24 commission of that offense.

25 To deny parole where no circumstances of the offense reasonably could  
26 be considered more aggravated or violent than the minimum necessary  
27 to sustain a conviction for that offense, violates due process of  
28 law. In re Scott, supra, 133 Cal.App.4th at p.598,

1//

1 The essence of the board's decision and the Superior court finding  
2 that the offense was callous which demonstrates an exceptionally  
3 disregard for human sufferin,thus making petitioner's release at this  
4 time an unreasonable risk of danger to society. Given the lapse of  
5 twenty-five (25),years of confinement and exemplary evidence of  
6 rehabilitation gains made by petitioner over that time,continued  
7 reliance on these aggravating factors of the crime do not amount to  
8 "some evidence" supporting denial of parole.

9 The commitment offense, The court have observed in an unsuitability  
10 factor that is immutable and whose perdictive value may be very  
11 questionable after a long period of time [citation].In re  
12 Scott,supra,133 Cal.App.4th at pp.594-595,fn.omitted. The Scott,opinion  
13 also noted,as has our Supreme court,strong legal and scientific support  
14 that."predictions" of future dangerousness are exceedingly  
15 unreliable",even where the passage of time is not a factor and the  
16 assessment is made by an expert. Id at p.595 fn.9

17 ~~Reliance on a immutable factor,without regard to or consideration of~~  
18 subsequent circumstances,my be unfair to run contrary to the  
19 rehabilitation goals espoused by the prison system,and result in a due  
20 process violation Id.at p.595.

21 A parole hearing [also],does not ordinarily provide a prisoner a  
22 very good opportunity to show his offense was not committed in a  
23 especially heinous,atrocious or cruel manner,even if such evidence  
24 exist and the prisoner is willing to run the risk his effort to make  
25 such a showing will be seen as unwillingness to accept responsibility  
26 and therefore evidence of unsuitability, Id. at p..600-601,fn.

27 This may be made worse by the absence of a trail transcripts  
28 (Ibid),That is the case here.



1 The alarming fact of this case is twelve(12) times in denying  
2 petitioner's parole this board has relied solely on the gravity of  
3 the offense something that no rehabilitative progress can ever  
4 change.

5 An instructive case is, Yellen v. Diane Butler (E.D.Cal.2003, No# CIV  
6 S-01-2398, Where petitioner, Yellen is serving two(2), concurrent terms  
7 of life with the possibility of parole for the conviction of  
8 Kidnap/Robbery, and was found unsuitable for parole at his  
9 third(3rd), parole hearing before the board in (1999), and three more  
10 additional hearings following the (1999) hearing at which he found  
11 unsuitable for parole.

12 The facts of the offense in many an all respects are far more worse  
13 than the instant case, Petitioner, Yellen along with two(2), crime  
14 partners in (1983), from November 5th til November 21st, went on a  
15 crime spree crimes including: conspiring to rob Neiman-Marcus, the  
16 overt acts in the conspiracy were stealing Mr. Silverman's

17 Porsche, breaking in at Kelco Industries to lure (ADT) security  
18 personnel, Kidnapping and Robbing Mr. Nixon, stealing Mr. Castenada's  
19 Van, posing as interested buyers of and attempting to steal  
20 Mr. Terzibachian's Porsche, Kidnapping to rob Mr. Nixon and  
21 Mr. Castenada, robbing Mr. Castenada and Mr. Nixon, unlawfully taking  
22 both of their Vehicles, attempting grand theft auto of Mr. Terzibachian  
23 Car, assault with fire-arms on Micheal and Rebecca Terzibachian and  
24 Joseph Deuer, assaulting Neiman-Marcus employees, burglarizing  
25 Neiman-Marcus.

26 Petitioner, Yellen was convicted and sentenced to prison for  
27 concurrent life terms with the possibility of parole for  
28 Kidnap/Robbery, the board continued to rely on the facts of the crime  
to deny parole.

1 The board concluded that Yellen's crime was trivial in relation to the  
2 offense, and the involved multiple victims.

3 The Eastern District court(2003), in Yellen wrote, more important in  
4 assessing any due process violation is the fact that continuous  
5 reliance on unchanging circumstances transforms an offense for which  
6 California law provides eligibility for parole into a de facto Life  
7 imprisonment without the possibility of parole, the court ask  
8 rhetorically petitioner, Yellen's crime or motivation for the crime  
9 which are going to change, the answer is nothing. The circumstances of  
10 the crime will always be what they were, and petitioner's motive for  
11 committing them will always be trivial petitioner has no hope of ever  
12 obtaining parole except that a panel in the future will arbitrarily  
13 hold that the circumstances were not that serious or the motive was  
14 more than trivial.

15 Given that no one seriously contends lack of seriousness or lack of  
16 triviality at the present time the potential for parole in this case is

17 remote to the point of non-existence, petitioner's liberty interest  
18 should not be determined by such an arbitrary remote possibility.

19 Further, the court found that there was not sufficient evidence to  
20 support the (1999) board's decision finding petitioner, Yellen  
21 unsuitable for parole.

22 Petitioner in the instant case is experiencing the same results as did  
23 petitioner, Yellen continuous denial of parole an unlike  
24 petitioner, Yellen being denied parole for six (6) times, petitioner in  
25 the instant case have been denied parole by the board  
26 twelve(12), times, the board relying on immutable factors to deny parole  
27 violation of due process of law.

28 ///

1 The court in Irons, supra, 358 f.Supp.2d at p.947 fn.3 ;express that,"To  
2 a point it is true,"the circumstances of the crime and the  
3 motivation for it may indicate a petitioner's  
4 instability,cruelty,impulsiveness,violent tendencies and the like.  
5 Howeve,after fifteen(15),or so years in the caldron of prison life,not  
6 exactly an ideal therapeutic environment to say the least,and after  
7 repeated demonstrations that despite the recognized hardship of  
8 prison,this petitioner does not posses those attribute,the predictive  
9 ability of the circumstances of the crime is near zero.

10 The rehabilitation success of petitioner is without a doubt a major  
11 factor in this case. The board's decision denying parole on the basis  
12 of the facts of the offense lacks "some evidence" that granting parole  
13 posed an unreasonable risk of danger to society,(Cal.Code Regs.,title  
14 15. section §2402,subd.(a).,The petition filed in this case should be  
15 granted and the board ordered to reverse its decision of the (2005)  
16 parole hearing from unsuitable to suitable,and grant petitioner a  
17 release date.

18 ///

19 There was no evidence before the Board showing that Petitioner had a  
20 unstable social history another reason to deny parole.

21 The board opined that petitioner,"Has an unstable social history  
22 related to the fact that between the ages of 13,to 15,years. of age  
23 petitioner was a gang member,smoked marijuana an also was involved in  
24 using other drugs and alcohol(See Exhibit(A)"HT"at pg.59,Lns.8-14)

25 Petitioner contend,that back in October(1982) when convicted of this  
26 offense an entering into the Department of Corrections in my initial  
27 interview,i was ask a number of questions such as:"Did i belong to a  
28 gand,"Did i drink alcohol,"Have i ever used drugs",and from my memory i  
answered yes to all of the questions.

1 The record reflect that there is no evidence showing that when  
2 petitioner had drunk alcohol from time to time and used drugs an  
3 associated with a gang, for my involvement with these elements wasn't  
4 to the degree that petitioner's daily life evolved around these  
5 negative activities for if it was a reality of some 30, years ago of  
6 extensive drug an alcohol use and gang activity, for that involvement  
7 to that degree would constitute an unstable social history an it  
8 would be well documented within the record of such involvement such  
9 as arrest and convictions relating to these issues, however the record  
10 is devoid of evidence showing that petitioner had an unstable social  
11 history, prior to the commitment offense, petitioner was married and  
12 worked as a welder and fork-lift driver, and provided for my family  
13 and lived a stable social life.

14 Moreover, petitioner submits that his past does not by itself  
15 reasonably establish current unsuitability because there is no  
16 additional evidence to complete a chain of reasoning between his past

17 and in finding that because of it he currently poses an unreasonable  
18 risk of danger if released.

19 The fact that petitioner was forthright an admitted to drinking an  
20 using drugs along with gang association at the ages of 13-16, years of  
21 age some 30, plus years ago does not by itself represent some evidence  
22 that he is currently a risk and danger if release from prison.

23 Thus, as this court of Appeal recently concluded in the matter of In  
24 re Scott, 2006, DJDAR 13961 at p.13963, "The test is not whether some  
25 evidence supports the reasons the board cites for denying parole, but  
26 whether some evidence indicates a parolee's release unreasonably  
27 endangers public safety. Cal. Code Regs., title 15, section  
28 §2402, subd. (a), [Parole denied of prisoner will pose an unreasonable  
risk of danger to society if released from prison]



1 Therefore, "some evidence" of the existence of a particular factor  
2 does not necessarily equate to some evidence the parolee's release  
3 unreasonably endangers public safety. Id.

4 Thus, the court must view the parole board's reason for denial of  
5 petitioner's parole within the context of the other factors it must  
6 consider to see if some evidence shows he continue to pose a current  
7 unreasonable risk to public safety. In re Scott, supra, 133 Cal.App.4th  
8 at pp.594-595, Applying that test, peititioner asserts the court will  
9 find no evidence that he is likely to commit another crime or that his  
10 release would unreasonably endanger the public.

11 Furthermore, although at the board hearing the record will reveal  
12 petitioner's involvement and participating in self-help substance  
13 abuse programs continuously since (1989) within the institution.

14 (See Exhibit(A)"HT" at pg.26,Lns.4-27; pg.27,Lns.1-10)

15 In sum, the factor cited by the board that petitioner has an unstable  
16 social history because of the use of alcohol and drug along with  
17 association with a gang does not constitute some evidence that  
18 petitioner, he currently poses an unreasonably risk of danger.

19 indeed, if peititioner's past involvement with the use of drugs an  
20 alcohol and gang association invariably establish his  
21 unsuitability, then the parole board could deny parole for the rest of  
22 peititioner's life based on this immutable factor. The board's  
23 decision in this regard appears to be arbitrary and capricious because  
24 as noted, the decision omits any consideration of, or even reference  
25 to, the undisputed evidence noted above.

26 ///

27 ///

28 ///

1 The Board's Decision Denying Parole Failed To Reflect Due  
2 Consideration Of The Circumstances Tending To Show His Suitability  
3 For Parole.

4 The board failed to consider evidence showing petitioner's is  
5 suitable for release from prison. The evidence shows the existence  
6 in this case of all the foregoing circumstances tending to show  
7 suitability for release from prison, except the "Battered woman  
8 syndrome, Cal. Code of Regs. section §2402, subd. (d), (1), (9).

9 The board commended petitioner for some of the circumstances tending  
10 to show suitability for parole; has completed high school, has  
11 vocations, and marketable skills, participated in self-help  
12 programing, has favorable psychiatric reports, and has realistic plans  
13 for parole an ample letters of support from family and friends  
14 supporting his release an at Fifty(50), years of age reduces the  
15 probability of recidivism (See Exhibit(A)"HT" at pg.59, Lns.21-24;  
16 pg.60, Lns.6-19).

17 The board's failure to undertake the individulized consideration of  
18 all relevant factors required by, Rosenkrantz, 29 Cal.4th at

19 p.655, "also offends the board's own regulations, which require that  
20 [A]ll relevant, reliable, information available to the panel shall be  
21 considered in determining suitability for parole, Cal. Code of  
22 Regulations., title 15. section §2402, subd. (b); In re Ramirez, 94  
23 Cal.App.4th 549, at 571-72.

24 [F]ailure to acknowledge that Ramirez's conduct in prison was a  
25 circumstance that supported his application for parole, is yet another  
26 indication of an arbitrary and capricious determination.

27 The board's treatment of petitioner is if anything more unfair than  
28 that considered in Ramirez, because more evidence of circumstances  
tending to show suitability for release was ignored here than in that  
case.

//

1 Furthermore, the evidence of petitioner's participation and  
2 performance while incarcerated is particularly significant. As the  
3 Supreme court has recognized, the behavior of an inmate during  
4 confinement is critical in the sense that it reflects the degree to  
5 which the inmate is prepared to adjust to parole release  
6 Greenholtz, 442 U.S. at p.15, 99 S.Ct. 2100.

7 Conclusion

8 For all the reasons expressed herein, this court should grant the  
9 petition for habeas corpus.

10 ////

11 ////

12 ///

13 ////

14 ////

15 ////

16 ////

17 ////

18 ////

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ///

28 ///

1 Petitioner Was Removed From His Parole Hearing And Deprived Of The  
2 Right To Ask Questions And To Speak Regarding An Unsupported  
3 Claim,For There Was No Evidence That Petitioner Was Not  
4 Cooperating,Being Combative,and Argumentative And Needed To Be Remove  
5 From His Parole Hearing.

6 On September 15th,2005,Petitioner went before the Board for  
7 petitioner's twelfth(12th),parole consideration hearing. The hearing  
8 was conducted by Commissioner,Susan Fisher,Deputy Commissioner  
9 D.H.Mcbean,Deputy District Attorney for the county of Los Angeles  
10 Alexis Delagarza,Katera Rutledg Attorney for petitioner,and  
11 Petitioner Willie E. Tatum Jr. were all present.

12 The Following Colloguy Is What Led To Petitioner's Removal From The  
13 Hearing.

14 [District Attorney Delagraza]:"I think the last hearing or the  
15 hearing before last,they suggested that petitioner do programing with  
16 the respect to the fact that the victims of the crime were women and  
17 the concern was that he had sexual aggression issues didhe ever do  
18 any self-help or any kind of anything on that"]

19 [Petitioner]:"Excuse me,you said that you read that in some  
20 transcripts of last years hearing"]

21 [Commissioner Fisher]:"Wait until the board ask the questions"]

22 [Deputy Commissioner Mcbean]:"Hold on is it in the transcripts of the  
23 hearing or was it in the transcripts of the decision"]

24 [District Attorney Delagraza]:"In the report i read that where it  
25 indicated what the inmate was told to do,I'm trying to find where it  
26 was"]

27 [Petitioner]:"And back to the representative,The District  
28 Attorney,"She said that she read is somewhere i mean,what document is  
this"]



1 [Commissioner Fisher]: "Just clam down we're not going to just leave  
2 it on record unsolved"]

3 [Deputy Commissioner Mcbean]: "Well it is a good question though, even  
4 if it hasn't been posed in the past, and i know you're not interested  
5 in talking about the crime today"]

6 [Petitioner]: "Right"]

7 [Deputy Commissinoer Mcbean]: "I do notice that in terms of self-help,  
8 the only thing you've done is A.A., and there was the sexual component  
9 of the crime, have you tried to do anything at all in terms of  
10 self-help on any sexual issues"]

11 [Petitioner]: "No because, i what was the conviction?, what is the  
12 conviction?"

13 [Deputy Commissioner Mcbean]: "Concerning the facts on the crime"]

14 [Petitioner]: "Okay, but what about the conviction?"

15 [Deputy Commissioner Mcbean]: "I'm asking the question"]

16 [Petitioner]: "What was the conviction, I wasn't convicted of no sexual  
17 crime"]

18 [Commissioner Fisher]: "Mr. Tatum let me give you some advice you're  
19 doing the same thing right now that you have been doing in other  
20 hearings, that have been getting you into trouble, if we're trying to  
21 go"]

22 [Petitioner]: "Get to what-what are you trying to get to  
23 Ms. Commissioner"]

24 [Commissioner Fisher]: "All right get him out of here please"]

25 [Petitioner]: "Can i have my chrono's, give me my chrono's"]

26 [Commissioner Fisher]: "I'll give them to you later, I'll give it to  
27 your Attorney at the end of your hearing, just for the record, I'm  
28 having the officer remove Mr. Tatum from the room, he is not  
cooperating, hes being combative, and hes argumentative, an we don't  
need to have him here"]

(See Exhibit(A)"HT",Starting at pg.40,Lns.20-27; On through to pg.44,Lns.1-16)

California Penal Code section §3041.5,and California Code of Regulations section §2247,affords petitioner the right during a parole hearing to ask an answer questions and to speak on my own behalf,an as petitioner exercised thses rights to ask questions and to speak on my own behalf regarding the unsupported claim made by District Attorney Delagrazia,petitioner was told to wait by Commissioner Fisher,"Until the board ask the questions,violating procedural right's of petitioner.(See Exhibit(A)"HT" at pg.41,Lns.4-9)

[Commissioner Fisher]:"Just clam down we're not going to just leave it on record unsolved";(See Exhibit(A)"HT" at pg.42,Lns.20-25)

The unsupported claim made by District Attorney Delagrazia did in fact remained on record unsolved,for she did not and could produce the supporting documentation,[T]he "Report" as evidence at the hearing to

support her unsupported stated claim regarding this sexual aggression issue that was fabricated by her.

Cal.Code of Regs. title,15. section §2030,(d),(2);hearing procedures;

Role of the Prosecutor, in pertinent part:

"In making comments,supporting documentation in the file should be cited",for District Attorney Delagrazia stated that she had read a prior board report stating that a prior board suggested that petitioner do some programing relating to sexual agression issues,for she mad the unsupported claim but did not and could not produce the documentation at the hearing to support her claim that went unsolved an as result petitioner was removed from his parole hearing after questioning the vilidity of the District Attorney's statement.

(See Exhibit(A)"HT" at pg.40,Lns.20-27;pg.41,Lns.1-17;pg.48,Lns.8-22)

1 Further, for no such "Reports" even exist for the board don't issue  
2 any reports for any recommendations or suggested programing that the  
3 board may recommend, it would be found in the decision section of a  
4 board transcripts after parole is denied, for an example of this  
5 procedure (See Exhibit(A) "HT" at Decision pg. 61, Lns. 2-5)

6 Moreover, at the outset of the parole hearing petitioner invoke the  
7 right not to discuss the offense (See Exhibit(A) "HT" at pg. 4, Lns. 2-15;  
8 pg. 7, Lns. 5-11); See also California Penal Code section §5011(b), and  
9 Cal. Code of Regulations section §2236)

10 The question stated into the record by District Attorney Delagrazia  
11 and supported by the board panel which led to petitioner being  
12 removed from his parole hearing, was a question involving  
13 circumstances surrounding the offense in which petitioner was not  
14 convicted of however these circumstances still remain as elements of  
15 the crime and petitioner chose not to discuss the offense, the  
16 conviction in (1982) was for Kidnap/Robbery, not Kidnap/Rape; (See  
17 Exhibit(A) "HT" at pg. 40, Lns. 20-27; pg. 47, Lns. 1-19)

18 Overmore, Commissioner Fisher was the hearing officer in charge of  
19 petitioner's parole hearing, Cal. Code of Regulation, title 15, section  
20 §2030(d), (1), hearing procedures in pertinent part:

21 The hearing officer shall ensure throughout the hearing that  
22 unnecessary, irrelevant or cumulative oral testimony and statements are  
23 excluded", and for the allowance by Commissioner Fisher of the  
24 unsupported stated claim and questions ask by District Attorney  
25 Delagrazia, and Deputy Commissioner Mcbean, for these questions and  
26 statements were unnecessary, irrelevant and was found to be unsupported  
27 by the record leading to petitioner being removed from his  
28 hearing, violation of due process of law.



Conclusion

That, this court grant this petition, for all the reasons expressed herein.

//

I, Willie Tatum declare under penalty of perjury that the above is true and correct.

For all the forgoing reasons this petition for review should be granted.

Dated: 10.3.07

Respectfully Submitted,

Willie E. Tatum Jr.

---

**PROOF OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY**  
(C.C.P. §§ 1013(A), 2015,5)

I, Willie E. Tatum Jr., declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

Willie E. Tatum Jr., CDCR #: C-55580  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 689, CELL #: EAST DORM 90/cow  
SOLEDAD, CA 93960-0689.

On October 3, 2007, I served the attached:

One Copy of Writ of habeas Corpus, for the review of The California Supreme Court.

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

California Supreme Court  
350 Mc Allister St.  
San Francisco, Ca. 94102-7303

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10.3.07.

Willie E. Tatum Jr.

Declarant

# CALIFORNIA APPELLATE COURTS

## Case Information



Welcome

## 2nd Appellate District

Change court

Search

Court data last updated: 10/11/2007 01:05 PM

E-mail

[Case Summary](#) [Docket](#) [Scheduled Actions](#) [Briefs](#)  
[Disposition](#) [Parties and Attorneys](#) [Trial Court](#)

Calendar

Help

Opinions

## Disposition

Tatum, Jr. v. The People et al.

Division 4

Case Number B200514



Description:	Petition summarily denied by order
Date:	09/26/2007
Status:	Final
Publication Status:	
Author:	
Participants:	
Case Citation:	

[Click here to request automatic e-mail notifications about this case.](#)

©2007 Judicial Council of California



RECEIVED

OCT 10 2007

CLERK SUPREME COURT

ATTENTION CLERK OF THE COURT:

Please accept the enclosed PETITION for filing in this court. Due to circumstances beyond my control, I declare as true under penalty of perjury, the following reasons I was unable to obtain any more copies of this petition.

1. The prison I'm currently housed in, Correctional Training Facility, suffers numerous lockdowns, and various other excuses why the prison library is closed.
2. The prison library is closed many days due to the prison Librarian being off.
3. The prison library allows less than 60 inmates in the library at a time for a prison that has around 3,500 inmates. I waited numerous times for my turn in the library, yet was denied access.
4. The one copier the library does have for over 3,500 inmates, has been out of toner, paper or some service problem, at least that's what I was told.
5. The United States Supreme Court requires only one copy of PETITIONS filed in their Court by inmates confined in an institution who are not represented by counsel. The high Court recognizes the difficulties inmates have in producing copies (see United States Supreme Courts New Rules-Model 1995, 116 S. Ct. 22).
6. Due to the requirements I file my PETITIONS in a timely manner, I have no choice but to file this petition without the number of copies requested by court rules. If this is a problem, please file my petition and let me know if I need to provide more copies, and I will do my best to obtain them.

Thank you for your time and understanding.

Willie Ed. Datum Jr.

Dated: 10.3.07

P.S. If possible could you please return to me a filed copy for my records.

Thank you

*Proof of Service – Mail*

**PROOF OF SERVICE**

Re: Case Number S157114  
Case Title In re Willie Tatum on H.C.

I hereby declare that I am a citizen of the United States, am over 18 years of age, and am/am not a party in the above-entitled action. I am employed in/reside in the County of San Francisco and my business/residence address is 350 McAllister St.  
SE, CA 94102

On Oct. 11<sup>th</sup>, 2007, I served the attached document described as a Petition for Review

on the parties in the above-named case. I did this by enclosing true copies of the document in sealed envelopes with postage fully prepaid thereon. I then placed the envelopes in a U.S. Postal Service mailbox in San Francisco, California, addressed as follows:

COURT OF APPEAL  
SECOND APPELLATE DISTRICT  
300 SOUTH SPRING STREET  
2ND FLOOR, NORTH TOWER  
LOS ANGELES, CA 90013

Los Angeles Superior Court  
111 North Hill Street  
Los Angeles, CA 90012

I, Colleen Thompson, declare under penalty of perjury that the foregoing is true and correct.

Executed on October 11, 2007, at San Francisco, California.

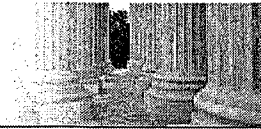
Colleen Thompson  
Signature

# **EXHIBIT 6**



# CALIFORNIA APPELLATE COURTS

## Case Information



Supreme  
Court

**Supreme Court**

Change court



Court data last updated: 08/28/2008 10:53 AM

Welcome

Search

Case Summary Docket Briefs  
Disposition Parties and Attorneys Lower Court

E-mail

## Docket (Register of Actions)

Calendar

**TATUM (WILLIE) ON H.C.**

Help

**Case Number S157114**

Opinions



Date	Description	Notes
10/10/2007	Petition for review filed	Willie Tatum, Petitioner in Pro Per
10/11/2007	Record requested	
10/16/2007	Received Court of Appeal record	
11/29/2007	Time extended to grant or deny review	The time for granting or denying review in the above-entitled matter is hereby extended to and including January 8, 2008, or the date upon which review is either granted or denied.
12/12/2007	Petition for review denied	

**Click here to request automatic e-mail notifications about this case.**

©2007 Judicial Council of California